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International Court of Justice

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Official Transcript of the International Military Tribunal in the Matter of the United States of America, the French Republic, the United Kingdom of Great Britain and Northern Ireland, and the Union of Soviet Socialist Republics against Hermann Wilhelm Goering et al, Defendants, sitting at Nurnberg, Germany, on 11 July 1946, 1000-1700, Lord Justice Lawrence presiding.

THE PRESIDENT: The Tribunal will adjourn this afternoon at four o'clock to sit in closed session.

Dr. Seidl , will you present the case of the defendant Frank?

Mr. President, my Lords,

The defendant Dr. Hans Frank is accused in the Indictment of having utilized his posts in Party and State, his personal influence and his relations with the Fuehrer for the purpose of supporting the seizure of power by the National Socialists and the consolidation of their control over Germany. He is also accused of having approved, led and taken part in the war crimes mentioned in Count 3 of the Indictment, as well as in the crimes against humanity mentioned in Count 4, particularly in the war crimes and crimes against humanity committed in the course of the administration of occupied territories.

As I have already explained in the case of the defendant Hess, the Indictment fails to adduce any facts in substantiation of these accusations. It is similar in the case of the defendant Frank; here again the Indictment contains no statement of factual details to substantiate the accusations.

Like all the other defendants, the defendant Frank is accused of having taken part in a common plan which is alleged to have had as its object the planning and waging of wars of aggression and the commission in the course of these wars of crimes which infringe upon the laws and customs of war.

The evidence has shown that the defendant Frank joined the National Socialist Party in the year 1928. Both before and after the assumption of power by the National Socialists he was concerned almost exclusively with legal questions. The Reich Law Department was under his control as Reichsleiter of the Party, until the year 1942. After Adolf Hitler's appoint-

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ment as Chancellor, Frank became the Bavarian Minister of Justice. In the same year he was appointed Reich Commissioner for the political coordination of legal institutions. This task consisted in the main of transferring to the Reich Ministry of Justice the functions of the administrative legal departments of the component States of the Reich. That was completed in the year 1934. When the affairs of the Bavarian Ministry of Justice had been transferred to the Reich, the office of the defendant Frank as Bavarian Minister of Justice came to an end. In December 1934 he was appointed Reich Minister without portfolio. In addition he became, from 1934, onward, President of the Academy for Germany Law, which he himself had founded, and President of the International Chamber of Law. Finally, he was the Leader of the National Socialist Lawyers' Association.

This list of the various posts held by the defendant Frank in Party and State would alone be sufficient to show that his work was almost exclusively concerned with legal matters. His tasks were in the main confined to the execution of Point 19 of the Party Programme, which demanded a German Common Law. And in actual fact almost all speeches and publications by the defendant Frank, both before and after the assumption of power by the National Socialist, dealt with legal questions in the widest sense of the term.

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In the course of his examination in the witness-box, the defendant Frank testified that he had done everythin he could to bring Adolf Hitler to power and to carry out the ideas and the program of the National Socialist party. But whatever the defendant undertook in this respect was done openly.

Here I can for the most part refer to the statements I made in the case of the defendant Hess. The aim of the National Socialists before they assumed power can be expressed in a few words :

Liberation of the German people from the shackles of the Versailles Treaty; elimination of the huge mass of unemployment which had arisen in consequence of that Treaty, and of the unreasonnable Reparations policy of Germany's former enemies; elimination of the signs of degenaracy - political, economic, social and moral -connected with that unemployment; and finally, the restoration of the sovereignty of the German Reich in all spheres.

The Prosecution was unable to produce any evidence to show that the revision of the Versailles Treaty was, if necessary, to be carried out by violent means and by war. The political, military and economic situation in which Germany found herself before the assumption of power - a situation in which it could only be a question of eliminating, the terrible consequences of the economic collapse and of enabling seven million unemployed again to play their part in the economic process - necessarily made any serious thought of a war of aggression appear futile.

Moreover, the evidence brought forth nothing to show the existence of th common plan, the evidence and, in particular, the testimony given by the witness Dr. Lammers and the defendant himself in the witness box, has shown on the contrary that Frank did not belong to the circle of Hitler's closer collaborators. The Prosecution was unable to present to the Tribunal a single document dealing with important political or military decisions with which the defendant Frank was connected. In particular, the defendant Frank was not present at any conference with Hitler which the Prosecution considered especially important for proving the alleged common plan, the minutes of which con ferences the Prosecution has submitted as Exh ibits USA numbers 25 to 34.

The only statute which is important in this connection is the Law concer ning the re-introdution of General Conscription of March 16, 1935. I have already explained in detail what led to the promulgation of that law and why

it cannot be looked upon as an infringement of the Versailles Treaty. The defendant Frank signed that law in his capacity as Reich Minister, as did all the other members of the Reich Government. That law, which had as its object the restoration-at least in the military sphere- of the sovereignty of the German Reich, did not harm to any other nation. Nor did the content of that law, or the circumstances which led to its enactment, allow the conclusion that it was part of a common plan whose object was the launching of a war of aggression.

The German people had been obliged to realize, during the preceding seventeen years, that the voice of a nation without military power, and in particular a nation in Germany's geographical and military situation, cannot make itself heard in the concert of nations if it has not at tis disposal adequate instruments of power. The Government of the German Reich faced the consequences of this realization, after equality of rights had been promised the German people over and over again for fourteen years and that promise had not been kept, and in particular after it had become clear in the years 1933 and 1934 that the Disarmament Conference would not be capable of fulfilling its appointed functions.

For the rest, I refer to the Proclamation of the Reich Government to the German people, which was issued in connection with the publication of that law.

Further, the work of the defendant Frank, even after the assumption of opwer and up to the beginning of the war, was confined almost exclusively to the execution of tasks connected with the leadership of the Academy for German Law and the National Socialist Lawyers' Association.

The objects of the Academy for German Law are apparent from the Law concerning its establishment of July 11, 1933. It was intended to encourage the reform of German legal processes and, in close and constant cooperation with the appropriate legislative authorities, to put the National Socialist program into practice in the whole sphere of law. The Academy was under the supervision of the Reich Minister of Justice and the Reich Minister of the Interior. The function of the Academy was to prepare drafts of statutes. Legislation itself was exclusively a matter for the appropriate Reich Ministries for the various departments.

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One of the tasks of the Academy was to exercise the functions of the legal committees of the former Reichstag. In actual fact the work of the Academy was done almost exclusively in its numerous committes which had been established by the defendant. Entry into the Academy was not dependent on membership in the Party. Most of the members of the Academy were legal scholars and eminent practitioners of the law, who were not Party members. Moreover, it is well known that the Academy for German law, kept up close relations with similar establishments abroad, and that numerous foreign scholars gave lectures in the Academy. These facts entirely exclude the assumption that the Academy could have played any important part in the common plan alleged by the Prosecution. The same is true of the position of the defendant Frank as leader of the National Socialist Lawyers' Association.

Adolf Hitler's attitude to the conception of a State resting on law, in so far as any doubt could still have been entertained about it, has become perfectly clear through the evidence presented at this trial. Hitler was a revolutionary and a man of violence. He looked on law as a himdrance and as a disturbing factor in the realization of his plans in the realm of power politics. Moreover, he left no doubt about this attitude of his and spoke about states under rule of law in a number of speeches. He was always very reserved in his dealings with lawyers, and for this reason alone it was impossible from the outset that any close association could have developed between him and the defendant Frank. The defendant Frank considered it his life's work to see the conception of State resting on law realized in the national Socialist Reich, and above all, to safeguard the independence of the judiciary.

The defendant Frank proclaimed these principles as late as in the year 1939, before the outbreak of war, in a great speech he made before 25,000 lawyers at the final meeting of the Congress of German Law at Leipzig. Among other things he declared on that occasion : "First, no one should be sentenced who has not had an opportunity of defending himself. Second, on one shall be deprived of his property, provided that he uses it unobjectionably from the point of view of his fellow-men, except by judicial sentence.

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Legal properties in this sense are honor, freedom, life and carnings from work.

Third an accused person, no matter under what procedure, must be enabled to procure someone to defend him who is capable of making legal statements on his behalf and he must have an impartial hearing according to law. If these principles are applied to their full extent, then the Germanic ideal of law is fulfilled."

These principles constitute an unmistakable repudiation of all meth employed in a police-ruled State and imply, moreover, the unmistakable rejection of the system of concentration camps.. The defendant Frank had actually spoken against the establishment of concentration camps before the date indicated. The evidence has shown that in the year 1933, in his capacity as Bavarian Minister of Justice, he was opposed to the concentration camp at Dachau, that he urged the application of the so-called legality principle that is the prosecution of all offences by the State -- even in these camps, and that, over and above this, he demanded the dissolution of the concentration campat Dachau. That this last point is a f is shown by the evidence, taken on commission of the witness, Dr. Stepp.

The Prosecution also appears to see in the sentence "Law is what is useful to the people" an indication of the participation of the defendant Frank in the alleged common plan. Such a conclusion could only be drawn from a complete misapprehension of the idea which the defendant Frank wished to express by means of this sentence. It is merely the issue of a challenge to the individualistically, over-sensitized legal idea. In the same sense as is implied in the phrase "The common good before one's own", the sentence quoted is intended

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to express the demand for a legal system, to a greater extent than in previous years, takes account of common law and socialist tendencies. It is in reality nothing more than a different way of saying: Salus publica suprema lex.

These material differences alone would have been sufficient to make it unthinkable that the defendant Frank could have belonged to the inner circle of Hitler's collaborators. The differences of outlook in regard to the functions of law were bound to become more apparent in the course of the war. It could therefore cause no surprise that after the death of the former Reich Minister of Justice, Dr. Guertner, it was not the defendant Frank who was appointed as his successor, but the President of the People's Court, Dr. Thierack.

And to sum up: It may be said that there is no factual foundation for the assumption that the defendant Frank participated in a common plan, a common plan which had as its object the waging of an aggressive war and in connection therewith the commission of crimes againt the rulesof war. Before I turn to the points of accusation brought against the defendant Frank within the framework of his career as Governor-General, I will refer shortly to responsibility under penal law as a member of the organizations accused of criminality.

So far as Frank's responsibility as member of the Reich Government is under investigation, I can here refer in the main to the statements which I will also make in the case of the defendant Hess. The only difference lies in the fact that whereas Hess too was only Reich Minister without Portfolio, he had - as the Fuehrer's Deputy under the Fuehrer's decree of July 27, 1934 - a considerable part to play in the preparation of laws. That however, was not the case with the defendant Frank. Frank had hardly any influence at all on the legislation of the Reich. That is why he was co-signatory of so extraordinary few Reich laws. With the exception of the law of the 16th of March, 1935, by which general conscription was re-introduced, his name is to be found under none of the laws which the Prosecution has presented to the Tribunal as relevant to the proof of the criminal nature of the Reich Government as an organization.

The defendant Frank, in his capacity as Reichsleiter and Leader of the

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Reich Law Department, was also a member of the Leadership Corps of the National Socialist German Workers' Party. An investigation of this point of accusation seems all the less called for, as no acts can be attributed to the defendant Frank which fulfil the requirements of any penal law. For the rest, and apart from that, here too I can refer to my statements in the case of the defendant Hess.

In the Annex to the Indictment it is alleged that the defendant Frank was a General of the SS. The evidence has shown that Frank at no time belonged to the SS and that he did not even have the honorary rank of a general of the SS. On the other hand, he was an Obergruppenfuehrer in the SA. With respect to the application made by the Prosecution to declare that organization as criminal too, the same may be said as in the case of the application to declare the Leadership Corps criminal. The Charter and the Prosecution here again depart from the principle which hitherto has been considered an indispensable component of any modern criminal law practice, the principle, namely, that no punishment is admissible unless guilt has been established in every individual case.

My Lords!

I now pass to the pointsof accusation in connection with the career of the defendant Frank as Governor-General. When the Polish Government had left the country after Poland's military collapse, the German occupying forces were faced with the task of building up an administration without the help of any parliamentary representation or any representatives of the former Polish STate. The difficulties arising out of this situation were bound to be all the greater because, in spite of the comparatively short time that the war had lasted, the war damage, especially to the communications system, was not inconsiderable. Above all, however, the establishment of an orderly administration was rendered more difficult by the fact that the unitary economic territory of the former Polish State was divided into three parts. Of the 388,000 square kilometers which made up the territory of the former Polish State, about 200,000 square kilometers were taken over by the Soviet Union, 97,000 sq. km. formed the Government-General, while the rest was incorporated in the German Reich. A change came on August 1, 1941. On that date Galicia was annexed to the Government-General as a new district, whereby the territory of the Government-General was increased to an area of approximately 150,000 square kilometers with about

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18 million inhabitants. This frontier-delimitation made it all the more difficult for the administration, as the agricultural excess products all went to the Soviet Union, while on the other hand, important industrial cities such as Lodz, and above all the coal-fields of Dombrowa, fell to the Reich.

Directly after the military collapse of Poland, a military government was set up to cover the four military districts of East Prussia, Posen, Lodz and Cracow, and Commander-in-Chief General von Rundstedt being placed at the head of that Government. The defendant Frank became Supreme Chief of Administration (Oberverwaltungschef).

The military Government ended on October 26, 1939, with the coming into force of the Decree of the Fuehrer and Reich Chancellor concerning the administration of the occupied Polish territories under the date of 12 October Through this decree the defendant Frank was appointed Governor-General for the occupied Polish territories which were not incorporated in the Reich and which shortly afterwards became known as the "Government-General".

As the time at my disposal is short, I will not go into detail on the question as to whether the administration of the territories of the former Polish State jointly designated as the Government-General should have conformed to the principle of occupatis bellica(occupation of enemy territory), or whether it should not rather be assumed that the principles of dobellatio (complete subjection and incorporation in a foreign State) were applicable in that case.

I come now to the question of the powers vested inthe defendant Frank by virtue of his office of Governor-General. According to Article 3 of the Fuehrer Decree of October 12, 1939 the Governor-General was directly subordinate to the Fuehrer. The same provision placed all branches of the administration in the hands of the Governor-General.

In actual fact, however, the Governor-General had by no means such wide powers as it would seem at first sight. The Fuehrer's Decree itself, provided in Article 5, that the Ministerial Council for the Defence of the Reich could also make laws for the territory of the Government-General.

The Plenipotentiary for the Four-Year-Plan had the same power. Articl 6 provided that over and above all, the highest Reich authorities could issue decrees necessary for plan ning within the German living space and economic area,

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and that these would be effective also for the Government-General.

Apart from this limitation of the authority of the Governor General, as provided in the Fuehrer Decree of October 12, 1939, other powers were conferred at a later dat, which impaired to an equal degree the principle of a military administration. That is particularly true of the position of the Plenipotentiary for Labour. I refer at this point to the appropriate documents presented by the Prosecution and the Defense, in particular to the Fuehrer Decree of March 21, 1942, in which it is expressly provided that the powers of the Plenipotentiary for Labour extend to the territory of the Government-General. The whole armament industry in the Government-General was at first in the hands of the OKW, but after the establishment of the Reich Ministry of Armaments, it came under the jurisdiction of the latter.

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The evidence has also shown that in other directi ns too the principle of military administration was extensively infringed upon. For this I refer to the statements of the witnesses Dr. Lammers and Dr. Buehler and to the conten of the documents submitted by me, especially the document USA 135. This deal with the directives in "special matters concerning instruction No. 21" (case Barbarossa)", in which it is expressly provided that the Commander-in-Chief o the Army shall be entitled "to order such measures in the Government-General a are necessary for the execution of his military duties and for safeguarding t troops", and in which the Commander-in-Chief is empowered to delegate his authority to the Army groups and armies.

All these infringements of the principle of a unitary administration of all special powers, however, pale beside the special positi n allotted to Reichsfuehrer SS Himmler even in respect of the territory of the Government-General. The evidence, and particularly the testimony of Dr. Bilfinger, councillor in the RSHA, shows that as early as in 1939, when the defendant was appointed Governor-General, a secret decree was issued in which it was provided that the Higher SS and Police-Leader East was to receive his instructions direct from the Reichsfuehrer SS and Chief of the German Police Himmler. Similarly, it is provided in the Decree of the Fuehrer and Reich Chancellor for the Consolidation of the German Nation that the Reichsfuehrer SS should be directly empowered to effect the formation of new German Settlement areas by means of resettlements. These two decrees conferred on the Reichsfuehrer SS Himmler powers which from the very first day of the existence of the Government-General were to confront its administration with almost insurmountable difficulties. It was very soon evident that the general Administration under the Governor-General had at its disposal no executive organs in the true meaning of the term. Since the Higher SS and Police-leader East received his instructions and orders direct from Reichsfuehrer SS Himmler and refused to carry out instructions emanating from the Governor-General, it was very soon seen that in reality there were two separate authorities ruling over the Government-General. The difficulties which thus arose were bound to become all the greater as Higher SS and Police-leader Krueger, who for not less than four years was Himmler's direct

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representative in the Government-General, did not even inform the administratic of the Government-General before carrying out police measures.

It is a well-known experience in constitutional life that any administration lacking executive police organs is in the long run not capable of carrying out its appointed functions. This is even true under normal conditions, but must be more especially the case in the administration of occupied territory. If we remember, moreover, not only that Reichsfuehrer SS Himmler issued his instructions direct to the Higher SS and Police leader, ignoring the Governor-General, but that over and above this, the offices III, IV, V & VI of the RSHA also gave direct orders, namely to the Commander of the Security Police and the SD in Cracow - then we can assess the difficulties with which the civil administration of the Government-General had to wrestle day by day.

Under these circumstances the Governor-General had no choice but to make every attempt to reach some form of cooperation with the Security Police, unless he was prepared to relinquish entirely any hope of building up a civil administration in the Government-General. And in fact the history of the administration of the Government-General -- which lasted more than five years - is for the greater part nothing but a chronicle of uninterrupted struggles between the Governor-General and the administration on the one hand and, on the other, the Security Police (including the SD) represented by Reichsfuehrer SS Himmler and the Higher SS and Police leader East.

The same applies to the work of Himmler and his organs in the field of resettlements. As Reichs Commissioner for the Consolidation of the German Nation Himmler and his organs carried out resettlement measures without even getting into previous contact with the administration of the Government-General or informing the Governor-General.

The numerous protests of the Governor-General, addressed to Dr. Lammers, Reichsminister and Chief of the Reich Chancellery, with regard to the measures taken by the Reichsfuehrer and the Higher SS and Police leader East and the difficulties they put in the way of the administration of that territory, have been established by the efidence. These protests led in the year 1942 to an attempted new regulation of the relationship between the administration and

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the police. In retrospect, it can be said today as a result of the evidence that even this attempt was only utilized by Himmler and the Security Police to undermine internally and externally the position of the Governor-General and his civil administration.

By Decree of the Fuehrer, dated May 7, 1942, a State Secretariat for Security was established in the Government-General, and the Higher SS and Police leader was appointed State Secretary. According to Article II of this Decree, the State Secretary for Security also became the representative of the Reichsfuehrer SS in his capacity as Reichs Commissioner for the consolidation of the German nation. The decisive provision of this decree is contained in Article IV, in which it is stated verbatim:

"The Reichsfuehrer SS and Chief of German Police can issue direct instructions to the State Secretary for Security in matters pertaining to Security and the Consolidation of the German nation."

Herewith, the contents of the secret decree issued in the year 1939 on the establishment of the Government-General - which also provided that the Higher SS and Police leader East was to receive his instructions direct from the Berlin central offices and above all from the Reichsfuehrer SSin person - was expressly and now publicly confirmed. It is true that Article V of the Fuehrer Decree of May 7, 1942 provided that in case of differences of opinion between the Governor-General and the Reichsfuehrer SS and Chief of German Police the Fuehrer's decision was to be obtained through the Reichs Minister and Chief of Chancellery.

Chief of the Reich Chancellery Lammers was interrogated on this subject when he appeared as witness before this Tribunal. He testified that in so far as he found it possible at all to gain the Fuehrer's ear in these matters, the latter on principle invariably approved Himmler's view. This is not surprising if we remember Himmler's position in the German Governmental system, particularly during the later war years. This deprived the defendant Frank of the last possibility of influencing in any way the measures taken by Himmler and the Higher SS and Police leader East.

In consequence of Article I, paragraph 3 of the Fuehrer decree of May 7, 1942, the scope of duties of the State Secretary for Security had to be newly

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defined. Both the Higher SS and Police leader, and backing him, the Reichsfuehrer SS, attempted to bring as much as possible under their jurisdiction in connection with the new regulation of the competence of the State Secretariat; on the other hand, the Governor-General, in the interest of the maintenance of some sort of order in the administration, naturally tried to obtain control of at least certain departments of the order Police and the administration Police. There is no doubt at all that it was the Police that emerged the victor in these struggles.

On June 3, 1942 the Governor-General was obliged -- in a decree concerning the transfer of offices to the State Secretary for Security - to declare himself willing to transfer to the State Secretary all the departments of the Security Police and the order Police. I have submitted this decree to the Tribunal (together with its two appendices A and B) in the course of the evidence as Exhibit Frank No. 4. The two appendices list all the departments of the order and security police that have ever existed in the German Police system. In Appendix A, which covers the departments of the order police, there are 26 numbers in which not only all the departments of the order police are transferred to the State Secretary for Security, but over and above that, almost all the departmental functions of the so-called administration police. I will only mention No. 18 as one example among many. This transfers to the order Police, and therewith to the Higher SS and Police leader, all matters connected with price control. What is true of the order Police is true in still greater measure of the departments of the Security Police. No change as compared with the earlier situation was brought about by placing under the jurisdiction of the Higher SS and Police leader the whole of the political and criminal police, politifal intelligence, Jewish affairs and similar departments; these competencies were already his as leader of the Security Police and the SD, and were made entirely independent of the administration of the Government-General under the secret decree of the year 1939. Departments were also transferred to the State Secretary for Security which had only the remotest connection with the tasks of the Security Police, i.e. matters such as the regulation of holidays and so on.

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Of no inconsiderable importance are the twl last numbers in the appendix A and B, in which it is expressly provided that at conferences and meetings, particularly with the central Reich authorities, on all matters pertaining to the Order and security police, the Government-General -- not the Governor -- should no represented by the Higher SS and Police Leader. Therewith any competency possessed by the Governor-General, even in regard to comparitively unimportant branches of the Administrative police, was transferred to the organs of Reichsfuehrer SS Himmler, and the Government-General was thus deprived of even the last remnants of an executive of its own.

Only by considering these facts and the development of the conditions obtaining between administration and police in the Government-General, is it possible to form an even approximately correct appreciation of the events in the Government-General which form part of the subject of the indictment in this trial.

Your Lordships, the Prosecution seeks to prove its accusations against the defendant Dr. Frank in the main, by quotations from the defendant's diary. In this connection I have the following basic observation to make:

That diary was not kept personally by the defendant Frank, but was compiled by stenographers who were present at Government conferences and other meetings with the Governor-General. The diary consists of 42 volumes with not less than 10,000 to 12,000 pages of typescript.

With one exception, the entries were made, not as a result of ditation by the Defendant, but in the form of stenographers' transcripts. For the greater part--and this is evident from the Diary itself--the authoris of this Diary did not record the various speeches and remarks word for word, but made a summarized version in their own words. The entries in the Diary were not checked by the defendant and--againswith one single exception--were not signed by him. The attendance lists stapled into several volumes of the Diary--they are only contained in such volumes as relate to Government conferences--cannot be

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looked upon as a substitute for a confirmatory note.

Moreover, the evidence has established clearly that very many entries in the diary were not made on the basis of personal observations, but came about throught the fact that the author was told, by the participatns, about the subject of government meetings or other conferences after they had taken place, and then expressed it in the diary in his own words.

Moreover, by an examination of the Diary, it can easily be determined that the entries cannot be considered complete.

All these facts bring us to the conclusion that the material evidential value of this diary must not be overestimated. The evidential value of this diary stands in no way in comparison to the evidential value of entries, which have been made personally by the persons in question.

Above all, however, it seems to me essential to point out the following:

The contents of any document is of material evidential importance in so far as the document is investigated in its entirety. The diary of the Defendant Frank with its 10,000 to 12 ,000 pages is one uniform document. It is improper to put in as evidence certain single entries without showing the comtext in which alone some of them can be understood. But it is particularly improper--and this infringes the principles of any presentation of evidence--to select from some uniform whole, such as a long speech, a few sentences and put them in as evidence. In Document Book No.II, I have listed a few examples of this, and hereby refer to them.

As the defendant Frank himself rightly pointed out in the witness-box, the diary is a uniform whole; only in its entirety can it be probative, and form part of the presentation of evidence. I have read through that diary of more than 10,000 pages, and can only confirm his opinion. And that was why I did not use single entries in presenting my evidence, but put in the whde diary.

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If I myself, in presenting evidence, have read certain single entries from the diary, and if in the course of my present address I shall quote a few more passages from it, then, just as in the case of the extracts put forward by the prosecution, their evidential value can certainly be gagued only within the framework of the whole diary.

The following may also be looked upon has having been established by the evidence: As the diaries show, and as is evident in particular from the testimony given by the witnesses Buchler, Boepple and Hoffinger, the defendant Frank, in his capacity as Governor-General often made two or three improvised speeches in the course of one day.

The extracts from the diar presented by the Prsecution consist for the most part of single sentences from such speeches. If we take into consideration both the temperament of the defendant and his habit of expressing himself in an incisive manner, then that is another reason which tends to reduce the probative value of these extracts from the diary. And we actually do find many diary entries which flatly contradict other entries on the same subject occurring a little earlier or later.

In connection with the many speeches made by the defendant Frank, the following must not be left out of consideration--and this too may belooked upon as established by the evidence: It was a foregone conclusion that the defendant Frank, as open champion idea of a State resting on law and of the independence of the judiciary, would come into increasingly sharp conflict with the representatives of the Police-State System; this developed to an even greater degree in the course of the war, both within the Reich territory and in occupied country. The representatives of the Police-State, however, were Reich Fuehrer SS Himmler and, for the area of the Government General, the Higher SS and Police Leader East, above all and in particular SS Ober-

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gruppenfuehrer and General of Police Krueger. The relations between the defendant Frank on the one hand, and Reich Fuehrer S.S Himmler and his representative Obergruppenfuehrer Krueger on the other, had been extremely bad even at the time the Government-General was established. They deteriorated still more as the divergence of outlook concerning the tasks of the police came ever more openly to the fore, and the defendant Frank was forced to make increasingly strong protests to the Chief of the Reich Chancellery, Dr. Lammers, and to the Fuehrer himself, regarding the violent measures taken by the Security Police and the SD.

As I have already mentioned, the Governor-General, lacking an executive of his own, had on the other hand no choice but to make repeated attempts to co-ordinate the work of the general administration with that of the police, in order to be in a position to carry out any administrative work at all. Obviously, these objectives demanded--at least on the face of things--a degree of conciliation towards the general attitude of the Security Police and, above all, of the Higher SS and Police Leader East. Moreover, the evidence has further established that the tension existing between the Governor-General and the Higher SS and Police Leader often reached such a degree that the defendant Frank could not but feel himself menaced and--to quote the words of the witness Buehler--was no longer a free agent and master of his own decisions.

The testimony of the witnesses Bach-Zelewsky and Dr. Albrecht leave no doubt on this point. Quite rightly, therefore, the witness Dr. Buehler also pointed out that the defendant Frank expressed himself with particular vehemence when the Higher SS and Police Leader, or the Commander in Chief of the Security Police and the SD were present at conferences and that his utterances were made on quite a different note when he was speaking to an audience composed only of members of the administration. Even a cursory inspection of the diary will confirm this. All these circumstances must be taken into consideration

in assessing thesubstantive evidencial value of the defendant Frank's diary.

It should also be noted that these diaries constituted the only personal property that Frank was able to rescue from the castle at Cracow. On his arrest, he handed all the diaries to the officers who took him into custody. It would have been an easy matter for him to destroy these diaries.

Your Lordships, I now turn to the separate accusations brought against the defendant, and their legal aspects. The defendant Frank is accused of having approved, led and participated in war crimes, and crimes agains t humanity in the administration of occupied territory.

As the law stands, it rests on the principle that only a sovereign state, not an individual, can be a subject of International Law. To make International Law binding on an individual, International Law itself would have to lay down that a certain set of facts constitutes a wrong and that the rule thereby established is applicable to an individual creating such a set of facts. Only in that way can individuals, who under the law as it stands, are subjected only to municipal criminal law, by way of exception be bound directly by International Law.

Deviating from this rule, operative International Law, in exceptional cases only, permits a State to punish the national of an enemy State who has fallen into its power, if before his capture, he has been guilty of infringing the rules of war. But even here punishment is excluded if the deed was not committed on the person's own initiative, but can only be atrributed to his s tate of allegiance. Moreover, the conception of war crimes and their factual characteristics are the subject of great controversy both in judicial decisions and in legal literature.

Nor do the Hague Rules on Land Warfare, which form the Annex to the IVth Convention on the Laws and Customs of War on Land, and purport to be a codification of certain section of

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the law of war, list any sets of facts which could be interpreted as a basis for the criminal liability of individuals. In Article 3 of this Convention it is, on the contrary, expressly provided that not individuals but the State that has infringed the Rules, may, under certain circumstances, be liable to pay an indemnity and is also responsible for all acts done by persons belonging to its armed forces.

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In connection with the Hague Rules for Land Warfare, of 1907, the following should also be noted:

The principles therein enunciated were evolved from the experience of wars in the 19th Century. Those wars were confined in the main to the armed forces directly concerned in them.

Now, even the first World War overstepped this framework, and not only in respect of the geographical extent of the bellicose conflicts. On the contrary, the war became a struggle for extermination of the nations concerned, a struggle in which each belligerent party utilized the whole of its war potential and all its material and imponderable resources. War technique having been meanwhile brought to perfection point, the second World War was bound to destroy altogether the framework set up for the conduct of war by the Hague Rules for Land Warfare. That is easily shown by circumstantial evidence: the present condition of Europe today reveals this. If we remember in addition that in Germany alone the greater part of almost every city has been destroyed as a result of bombing raids; and not only that, but that considerably more than a million civilians thereby lost their lives and that in a single major raid on the city of Dresden almost 300,000 people were killed, then it will be possible to realize that the Hague Rules for Land Warfare (at any rate in respect of many activities coming under the rules of war) can no longer be an adequate expression of the laws and customs to be observed in waging war. But if any doubt should exist on this subject, then that doubt will certainly be removed on contemplation of the consequences of the two atom bombs which razed Hiroshima and Nagasaki to the ground and killed hundreds of thousands of people.

Taking these circumstances into consideration, it is not possible to adduce the provisions of the Hague Rules for Land Warfare, even indirectly and by way of analogy, to establish individual criminal liability.

Seeing that this is the case, it must be looked upon as impossible to give a clear, general definition of the factual characteristics of so-called war crimes. Referring to the fact that even Article 6 of the Charter of the International Military Tribunal only purports to furnish a list of examples, it will be realized that the question as to whether a certain line of conduct amounts to the commission of a war crime or not, can only be answered on the merits of each particular case and then only if all the circumstances are taken into consideration.

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In the course of the presentation of evidence for the personal responsibility of the defendant Frank, the Prosecution submitted as Exhibit USA 609 (864 PS) minutes of a conference held by the Fuehrer with the Chief of the OKW on the future form of Polish relations to Germany. This Conference took place on October 17, 1939. It is alleged that these minutes alone, in which the administrative goals of the defendant Frank in the Government-General are said to be established, reveal a plan or conspiracy at variance with the laws of warfare and humanity. This is an inadmissible conclusion, at least in so far as the defendant Frank is concerned.

The Prosecution was unable to prove that the Fuehrer entrusted the defendant Frank with a task in conformity with the administrative aims demanded in that conference. Moreover, this seems very unlikely, because the directives laid down at that conference dealt mainly with measures which could only be carried out, not by the general administration, but alone by the Securit Police, the SD and the other organs and offices under Reichsfuehrer SS Himmler. In this connection special mention should also be made of the powers entrusted to Reichsfuehrer SS Himmler (before the date of that conference) in his capacity of Reich Commissioner for the Consolidation of the German Nation. Actually, there is at the end of document USA-609, a reference to a commission with which Himmler was charged. In consideration of the fact that the defendant Frank, in the course of a short interview with Hitler, about the middle of September 1939, had been told to take over the civil administratio of occupied Polish territory as Chief of Administration and had not seen Hitler for a very long time after that, it can safely be assumed that the directives laid down at the conference between Hitler and the Chief of the OKW were intended, not for the defendant Frank, but for Reichsfuehrer SS Himmler, who was the only person to have the necessary executive organs at his disposal.

THE PRESIDENT: We will adjourn now.

(A recess was taken.)

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Another document to which the Prosecution has referred and which is also alleged to show the criminality of the administrative aims of the defendant Frank is USA Exhibit No. 297, which is EC 344-16. The content of this document is a discussion which the defendant Frank is said to have had on October 3, 1939 with a certain Captain Varain. The defendant Frank testified in the witness-box that he had never made any such or similar statements to an officer. Moreover, a comparison of the dates shows that this conversation, even if it should have taken place, can have no connection with the subject of the conference between the Fuehrer and the Chief of the OKW, the latter not having been held till October 17, 1939; that is, at a later date.

Not within the framework of the evidence presented in connection with the personal responsibility of the defendant Frank, but in connection with the accusation of so-called Germanization, a document was submitted with the number USA Exhibit 300, 661-PS. This is a memorandum entitled, "Legal aspects of German Policy towards the Poles from the ethno-political point of view". According to a note on the title page, the legal part of this was to serve as a model for the Committee of the Academy for German Law which dealt with legal nationality questions. This document can have no probative value in connection with the personal responsibility of the defendant Frank. He testified in the witness-box that he had given no instructions for the writing of that memorandum and that he was not aware of its content. Over and above this, it would seem thatno substantive evidential value can be attached to that document within the scope of this whole trial.

Nor is it evident from the memorandum who wrote it or who gave instructions that it should be written. Its whole form and content would seem to show that it is not an official document, but rather the work of a private individual. It was stated to have been found at the Ministry of Justice in Cassel. But in actual fact there has been no Ministry of Justice at Cassel for many decades. All these circumstances would point to the material probative value of this document as being at least extremely small.

But whatever the evidential value of minutes of conferences that took place in the year 1939 on the occasion of the establishment of the Government General, the following should be pointed out:

In judging the conduct of the defendant Frank it is not of such essential importance to know what Hitler, he himself, or other persons said on one occasion or another, but what policy the defendant Frank actually pursued towards the Polish and Ukrainian peoples. And here there can be no possible doubt -- on the basis both of the general result of the evidence and in particular of entries in the diary of the defendant himself -- that he repudiated all tendencies and measures designed to effect Germanization. That is shown with great clarity by the extracts from the diary which I have submitted to the Tribunal. Thus, on March 8, 1940, he declared at a meeting of department chiefs, i.e., to an audience of men who as leaders of the various main departments were deputed to put his directives into practice:

"I have been charged by the Fuehrer to look upon the Government-General as the home of the Polish people. Accordingly no Germanization of any sort or kind is possible. In your departments you will please see that the two-language principle is strictly observed; you will also point out to district and provincial officers that no violence is to be used in opposing such safeguarding of separate Polish existence. We have in a certain sense herewith taken over on trust from the Fuehrer the responsibility for Polish national life."

This declaration alone makes it apparent that the directives laid down in the Conference between Hitler and the Chief of the OKW on October 17, 1939 and contained in document USA 609, 864-PS cannot possibly have been made the subject of the duties with which the defendant Frank was charged. On the other hand, in view of the entire work done by the Higher SS and Police-Leader East from the first day of his appointment, it can safely be assumed that it was Reichsfuehrer SS Himmler whom Hitler charged with carrying out the directives laid down at his conference with the Chief of the OKW.

A diary entry of February 19, 1940 is on the same lines; in this the defendant Frank advocates the formation of a Polish government or regency

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Council.

On February 25, 1940, at a service conference of department chiefs and district and municipal commanders of the District of Radom, the defendant Frank gave out inprogramme form his directives regarding general administration. On this occasion the defendant Frank said among other things:

"1. The Government-General comprises that part of the occupied Polish area which is not a component part of the German Reich....

"2. The Fuehrer has decreed that this territory is to be the home of the Polish people. The Fuehrer and General Field-Marshal Goering have impressed on me over and over again that this territory is not to be subjected to Germanization.

"3. In accordance with the instructions we have received underthe Fuehrer's decree Polish laws will remain in force here."

On June 7, 1942 the defendant Frank stated word for word as follows:

"It is not as rulers by violence that we come and go in this country. We have no terroristic or oppressive intentions. Welded into the interests of Greater Germany, the living rights of the Poles and Ukrainians in this territory are also safeguarded by us. We have not taken away from the Poles and Ukrainians either their churches, their schools or their education. The German does not wish to de-nationalize by violent means. We are sufficient unto ourselves, and we know that people must be born into our community and that it is a distinction to belong to it. And that is why we can look the world in the face with this our work." End of quote.

These examples could be amplified by many more, which all show clearly that the measures taken, at any rate by Frank, were intended to care for the Polish nation and that he repudiated any terror policy.

I come now to the so-called "peace-enforcing action". When the campaign against Poland had ended in September 1939, that did not mean that all resistance had ceased. Very soon afterwards new centres of resistance sprang up, and when on April 9, 194 0 German troops occupied Denmark and Norway and on May 10, 1940, the German Western Army had begun their attack, the leaders of the Polish resistance movement believed that -- in consideration of the general political and military situation -- the time for action had come. This resistance movement was all the more dangerous because

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scattered but not inconsiderable remnants of the former Polish Army were active in it. A large number of entries in the diary of the defendant Frank show that the security situation worsened from day to day during that period. Here for instance is an entry for May 16, 1940:

"The general war situation requires that the most serious consideration be given to the internal security situation of the Government General. A large number of signs and actions lead one to the conclusion that there exists a widely-organized wave of resistance on the part of the Poles in the country, and that we are on the threshold of violent happenings on a large scale. Thousands of Poles are already organized in secret circles; they are armed and are being incited in the most seditious manner to commit all kinds of violence."

In consideration of this menacing general situation, the order was given - as the diary shows, by the Fuehrer himself - that in the interest of the maintenance of public security, all measures were to be taken to suppress the imminent revolt.

That order was given through Himmler to the Higher SS and Police Leader. The administration of the Government-General had at first nothing to do with it. It intervened, however, in order as far as possible to prevent the security police and the SD from taking violent measures and to make sure that innocent people should under no circumstances loss their lives.

The testimony given by the defendants Frank and Seyss-Inquart in the witness-box, and the evidence given by the witness Dr. Luehler, have shown that the efforts made by the administration of the Government General were so far successful that all the members of the resistance movement rounded up by this special action were brought before a drum-head court-martial introduced by a decree issued in the year 1939; and moreover, the decisions of this court were not carried out before being submitted to a Board of Pardon which in many cases modified the sentence .. The Chairman of the Pardon Board was -- until his appointment as Reich Commissioner for the Netherlan -- the defendant Dr. Seyss-Inquart. As his testimony revealed, no less than hal the death sentences pronounced by the summary court were commuted to imprisonment by the Pardon Board. For the rest, as regards the so-called extraordinary peace-enforcing action, I refer to the oral testimony and to the extracts from the diary of the defendant Frank which I read into the record.

Within the framework of the charges against him personally, the defendant Frank is accused of having supported the resettlement plans of the Reic Commissioner for the Consolidation of the German nation (Himmler) and of having thereby also committed a war crime. There is no question but that resettlements, even if they are carefully planned and well-prepared, mean gre hardship for those who are affected by them; in many cases a resettlement means the destruction of a person's economic existence. Nevertheless, it seems doubtful whether the effectuation of re-settlements constitutes a war crime or a crime against humanity, for the following reasons :

Germany today is being flooded with millions of people who have been driven from their homes and who own no property but what they carry with them The misery thereby caused, which is bound to increase to an immeasurable degr in consequence of the devastation wrought by the war, is so terrible that the bishops of the Cologne and Paderborn ecclesiastical districts were moved, on March 29, 1946 to bring this state of affairs to the attention of the whol world. Among other things they said :

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"Some weeks ago we found occasion to comment on the outrageous happenings in the East of Germany, particularly in Silesia and Sudetenland, where more than ten millions Germans have been driven from their ancestral homes in brutal fashion, no investigation having been made to ascertain whether or not there was any question of personal guilt. No pen can describe the unspeakable misery there imposed in contravention of all consideration of humanity and justice. All these people are being crammed together in the rump of Germany without means to found an existence there. It cannot be foreseen how these masses of people who have been driven from their homes can become other than peace-lacking and peace-disturbing elements."

My Lords. I am not mentioning this in order to point out the enormous dangers connected with such measures, dangers which must arise alone out of the fact that in view of her envisaged deprivations of territory, Germany -- with an area reduced by 22 % as compared with 1919 - will have to feed a population increased by 18 % and that in future there will be 200 inhabitants to the square kilometer. I am, further, not pointing to this state of affairs to show that if the present economic policy is continued and the so-called industrial plan is maintained, Germany is heading for a catastrophe the consequences of which cannot be confined to the German people. The evidential relevance of these facts is however shown by the following:

Millions of Germans were driven from their ancestral homes in accordance with a resolution taken at Potsdam on August 2, 1945 by President Truman, Generalissimo Stalin and Prime Minister Attlee.

GENERAL RUDENKO: Mr. President, excuse me for interrupting the defendant's counsel, but it seems to me the considerations of the law and the critique of the decisions taken at Potsdam have no relation to the present case.

DR. SEIDL: Mr. President, may I briefly define my attitude on this ?

As far as I am concerned, I do not wish to criticize the decisions of the conference at Potsdam. However, I am anxious to find out whether, employing the rules of the Charter, a certain conduct which has been alleged on the part of the defendant Frank constitutes evidence for war crimes or crime against humanity. It is only within the framework of investigating that question that I find myself forced to go into the decisions of the so-called Potsdam conference and bring them up in my argument.

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THE PRESIDENT: Dr. Seidl, the Tribunal considers that your references to the Potsdam declaration are irrelevant, and the objection of General Rudenko is therefore sustained. You are directed to go on to some other part of your argument.

DR. SEIDL: Mr. President, I presume that the Tribunal have the translation of my presentation at hand. I am not quite clear about the question as to whether the final conclusion, which appears at page 38, is also affected by the decision of the Tribunal which you have just announced.

THE PRESIDENT: It is affected by that, and I think you can pass on to page 40, where you begin to deal with the subject of the Jews. That is the second paragraph on page 40.

DR. SEIDL: Very well, Mr. President.

The defendant Frank is further accused of having approved and carried o a program for the extermination of Jews of Polish nationality, thereby infringing upon the laws of war and humanity.

It is ture that in a number of speeches given by the defendant Frank in his capacity as Governor-General, he revealed his point of view on the Jewish question. The extracts from the diary submitted by the Prosecution in connection with this matter comprise practically everything relevant thereto in the defendant Frank's diary of ten to 12,000 typed pages. Nevertheless it shall not be denied that the defendant Frank made no secret of his anti-Semitic views. He spoke in detail on this question when giving his testimony in the witness-box.

But the question of the importance to be attached to the diary entries submitted by the Prosecution is quite another matter. Almost all of them consist of statements made by the defendant Frank in speeches, but there has not even been an attempt by the Prosecution to prove the existence of a cause connection between these statements and the measures carried out against the Jews by the Security Police.

As a result of the evidence, in particularof the testimony given by the witnesses Dr. Dilfinger and Dr. Buehler, it can be looked upon as certain -- in connection with the secret Decree concerning the jurisdiction of the Security Police and the SD of the year 1939, and the Decree concerning the transger of certain tasks to the State Secretary for Security- that all the

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measures concerning Jews in the Government-General were carried out exclusively by Reich Fuehrer SS Himmler and his organs. That is true for both the initiation and the organization of the so-called final solution of the Jewish question.

As regards the latter, it may be said here, on the basis of the testimony given by the witnesses Wisliceny and Hoess and of the documents presented by the Prosecution, that these measures were undertaken on Hitler's express orders and that only a small circle of persons was concerned in their execution. This small circle was confined in the main to a few SS leaders of Department IV-a-4-b of the RSHA and the personnel of the concentration camps that had been selected for the purpose.

The administration of the Government-General had nothing to do with these measures. The above facts also show that the antisemitic statements by the defendant Frank submitted by the Prosecution have no causal connection with the so-called final solution of the

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Jewish question. Since a casual link must be established before the question of illegality and guilt can even be considered, it does not seem necessary to dwell further on the matter. All the less because the factual elements of many punishable offenses can only be said to exist if at least an attempt has been made, that is, if the commission of the offense has at least been begun. Under the principles derived from the criminal law of all civilized nations, the statements contained in the diary of the defendant Frank do not even constitute preparatory acts.. In consideration of the tense and sometimes extremely frangible relationship between the Government General on the one hand and the Reichsfuehrer SS Himmler and the Higher SS and Police -Leader Krueger on the other, it would also seem to be impossible to look upon the statements of the defendant Frank as acts of incitement or complicity. The evidence has shown on the contrary that all the efforts of the defendant Frank to investigate successfully the rumours about the elimination of the Jews, at least within his own administrative district, failed of their purpose. Only to complete the picture need it be mentioned that the concentration camp of Auschwitz was not in the Government General, but in that part of Poland which was annexed to Upper Silesia. For the rest, it cannot be clearly seen whether the erection of concentration camps is in itself to be looked on as fulfilling the requirements of a war crime or a crime against humanity, or whether the Prosecution considers the establishment of such camps solely as part of the so-called common plan. Setting aside the crimes committed in the concentration camps, and considering the nature of concentration camps to be that in which people areconfined forreasons of state and police security on account of their political opinions and without an opportunity of defending themselves in an ordinary court of law, it appears at least doubtful whether an occupying Power should not have the right to take such necessary steps as this in order to maintain public order and security. Apart from the fact that it was not National Socialists and not Germans at all who first established such camps, the following must be mentioned.

According to a statement dated January 14, 1946, by General Lucius D. Clay, Deputy Commander of the zone in Germany occupied by American

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troops, 250,000 to 300,000 people in that zone were at that time being detained on account of their political opinions.

DR. KEMPNER: Mr. President, this chapter is completely irrelevant.

THE PRESIDENT: Dr. Seidl, do you wish to say anything in answer to the objection?

DR. SEIDL: Mr. President, I beg you to overrule the objection by the prosecution, and in elucidation I should like to say the following. I am not interested in criticizing an occupying power. Here again, once more, I am concerned with the question of whether a certain conduct of which the defendant Frank has been accused by the Prosecution constitutes the evidence of a criminal act.

I base my case on the assumption that something which is proper for one occupying power to do must under similar circumstances be granted another occupying power, particularly if we are concerned with the case where accusations made against the defendant are for actions carried out during the war, whereas the state of war within Germany had ceased on May 9, 1945, at the very latest.

THE PRESIDENT: The Tribunal sustains the objection. There is no evidence of the statements which you have made. And in any event, the Tribunal considers them entirely irrelevnt.

DR. SEIDL: I assumed, Mr. President, that in that case I may continue with the last paragraph on Page 44.

THE PRESIDENT: I think so, yes, the last paragraph.

BY DR. SEIDL:

It is not necessary to go into this matter in more detail here, because the evidence has shown that it was the defendant Frank who from the first day of the National Socialists' assumption of power fought against the police-State system, and, above all, stigmatized the concentration camps as an institution which could in no way be made to harmonize with the idea of a state resting onlaw. In this connection I refer to the testimony given by the witness Dr. Stepp, to the defendants' own statement and above all to the extracts from the defendant's diary which I put in evidence. The evidence has further shown that the establishment and administration of the concentration camps lay within the sphere of

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Reichsfuehrer SS Himmler's organization. The camps, both in Reich territories and in all areas occupied by German troops, were exclusively under the command of the SS WVHA and/or the Inspector-General of the concentration camps. Neither the Governor General nor the general administration of the Government General had anything to do with these camps.

A further point of accusation against Frank is the charge that he supported violence and economic pressure as a means of recruiting workers for deportation to Germany. It is true that during the recent war, many Poles came to work in Germany, But in this connection the following should be noted:

Even before the first world war, hundreds of thousands of Poles came to Germany as vagrant workers. This stream of vagrant workers continued to flow even during the period between the first and the second world wars. In consequence of the ill-fated demarcation line, the Government General became an area that was distinctly over-populated. The agricultural superfluity areas had fallen to the Soviet Union, whereas important industrial areas were incorporated into the Reich. Under these circumstances, because there were no riches to be found in the soil, the only valuable means of production lay in the working capacity of the population. And this - at any rate for the first few years - could not be absorbed to a sufficient extent, because the other production factors were lacking. In order to avoid unemployment and above all in the interest of maintaining public order and security, the administration of the Government General was bound, if only for reasons of state policy, to try to transfer as many workers as possible to Germany. There can indeed be no doubt that during the first years of the administration most of the Polish workers went to the Reich voluntarily. When later, in consequence of the continuous bombing raids, not only Germany's cities, but also her factories crashed in ruins and a not inconsiderable part of Germany's capacity for the production of war materials had to be removed to the Government General for reasons of security, the aim of the defendant Frank was necessarily to put a stop to any further transfer of labor. One and above this, however, the defendant Frank had from the very beginning opposed all violent measures

in recruiting labor, and alone for security reasons and in order not to create new centres of unrest, had insisted that no compulsory measures were to be used, and only propagandistic methods employed. That is certain, as shown by the testimony of the witnesses Dr. Buehler and Dr. Boepple, and also by a large number of entries in the diary. In my presentation of evidence I have already referred to several of them. Thus, for example, the defendant Frank said among other things on March 4, 1940:

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"...I refuse to issue the decree demanded by Berlin, establishing compulsory measures and threatening punishment. Measures that viewed from the outside would create a sensation must be avoided under all circumstances. There is everything to be said against the removal of people by violence."

On January 14, 1944 he made a similar statement to the Commander of the Security Police. I quote:

"The Governor General is strongly opposed to the suggestion that police forces should be used in recruiting labour." These quotations could be amplified by many more.

I refer further to the evidence presented by me in respect of the treatment of Polish workers in Germany. The defendant Frank continuously and repeatedly pleaded for better treatment of the Polish workers in the Reich.

For the rest, the legal position in the matter of recruiting foreign labou does not appear to be quite clear. I do not intend to go further into the legal questions pertaining to this matter.

In the literature of international law however, it is undisputed that the conception of vital stress (Notstand) as recognized in criminal law, would, in international law, too, precluded illegality in the case of a violati of law committed within that framework.

If the vital interests of a State are endangered, the State may, these interests being paramount, safeguard them if necessary by injuring the just interests of a third party. Even those writers who deny the application of the "vital stress" theory to international law -- they are in the minority -- grant the threatened state the "right to self-preservation" and therewith the right to enforce "necessities of State" even at the cost of the just interests of other states. It is a recognized principle of international law that a state need not wait until the direct threat of extinction is at its very threshold. There can be no doubt that after the entry into the war of the United States, with which for all practical purposes the productive capacity and the military might of almost the whole world were gathered together to overthrow Germany, the German Reich was faced with a situation which not only threatened the State as such with extinction, but over and above that placed the bare existence of the people in jeopardy. Under these circumstances the

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right of the state leadership to make use of labour forces, even those in occupied territory, in this defensive struggle had to be acknowledged.

In addition, the following should not be passed over: The prosecution alleges that many, if not most of the foreign workers were brought to Germany by force and that they were then obliged to do heavy labour under degrading conditions. However one may look upon the evidence on this question, the fact cannot be ignored that there are hundreds of thousands of foreign workers still living in Germany who were allegedly deported thither by force. They refuse to return to their homes, although no one now attempts to hinder them. Under these circumstances it must be assumed that the force cannot have been as great, nor the treatment in Germany as bad as is alleged by the Prosecution.

Another allegation refers to the closing of the schools. It may be left out of account whether international law recognizes any criminal classificatio which would make the closing of schools appear as a war crime or a crime agair humanity. In time of war this would seem to be all the more unlikely as it is well-known that schooling in war-time was considerably reduced, not only in Germany, but in many other belligerent countries. There is all the less reason to investigate this question more thoroughly, as the evidence has shown that the schools were for the most part already closed when the defendant assumed office asGovernor-General. During his whole period of office he left no means untried to re-activate not only the elementary and technical, but also the higher forms of school. In this connection I will only mention the University courses which he initiated.

The Soviet Prosecution haspresented as USSR Exhibit No. 335 a decree issued by the defendant to combat attacks against German reconstruction work i the Government General, dated October 2, 1943. There is no question but that this decree setting up a drumhead-court-martial is not in conformity with what must be demanded of Court procedure under normal circumstances. This decree can only be judged correctly if the circumstances which led to its promulgatio are taken into consideration.

In general it should first be said that the reconstruction work of the administration of the Government General had to be carried on in a difficult territory and under circumstances which must be among the most difficult that

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have ever fallen to the lot of any administration. After the collapse of the Polish State, the German administration found so to speak an empty space in which to organize and administer. In all spheres of administration they had to start completely afresh. If in spite of the difficulties they succeeded fairly quickly in removing war damage, particularly in the communications system, then that is incontestably to their credit.

The year 1940 washowever to prove the only one in which the work of restoration in the area of the Government General could be carried out under fairly normal conditions. As the year 1941 opened, the Germans began to concentrate their troops for action against the Soviet Union, and therewith initiated a period of immense strain for the administration of the Government General. The Government General became the greatest repair workshop and the greatest military transit territory that history has ever known. This carried in its train an increasing deterioration of the security situation. The resistance movement began to re-organize on an intensified scale. But the menace inherent in the security situation developed to a still more alarming degree when the German armies were forced to arrest their progress in Russia and when -- after the catastrophe of Stalingrad -- their march forward was transformed into a general retreat. In the course of the year 1943, the activities of the resistance movement and in particular of the numerou guerilla bands in which thousands of a-social elements were grouped, reached extremes that represented a danger to any kind of orderly administration. The administration of the Government General was forced again and again to deal with this matter. Thus on May 31, 1943 a service meeting of the government of this Government General was held to deal with the security situation.

At that meeting the President of the Chief Department Internal Administration felt obliged to state among other things (I quote from the Diary):

"...In their activities the guerilla bands have revealed an increasingly well-developed system. They have now gone over to the systematic destruction of institutions belonging to the German administration; they steal money, procure typewriters and reduplication machines; destroy quota-lists and lists

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of workers in the communal offices, and take away or burn criminal records and taxation lists. Moreover raids on important production centers in the country have multiplied, for instance on saw-mills, dairies and distilleries, as also on bridges, railway installations and post-offices. The organization of the guerillas has become strongly military in character."

In the course of the Summer and Autumn of the year 1943, the increasing activities of the partisans and the improvement in their military organization and equipment so endangered security in the Government-General that it might perhaps under the circumstances have been better to turn over its entire administration to the appropriate army commanders, and to proclaim martial law. It is indeed not possible to describe the conditions then existing in the Government-General as anything else but a state of war. It was the period when at any moment the possibility had to be taken into account that a general revolt would break out over the whole country.

All this notwithstanding, the defendant Frank even then made every effort t thwart any violent measures by the security police and the SD under all circumstances. It was in order to exercise at least a modifying influence on the security police and the SD and to have at least some guarantee against excesses that the defendant Frank agreed to the order dated October 9, 1943, setting up a drumhead court-martial.

As is quite obvious from the content of this decree, its main purpose was to serve as a general preventive. It was meant as a deterrent to the guerillas, and there can be no question but that in this it was temporarily successful. For the rest, the evidence has shown that even while this drumhead court-martial order was in operation, the Pardon Boards continued to act and that many sentences passed by the drumhead court-martial were reversed by the Pardon Boards.

In the course of the present trial repeated mention has been made of the report by SS Brigadefuehrer Stroop concerning the destruction of the Warsaw Ghetto in the year 1943. USA Exhibit 275 (1061 PS). Both that report and a number of other documents reveal that all the measures in connection with the Warsaw Ghetto were undertaken exclusively on the direct instructions of Reichsfuehrer SS and Chief of German Police Himmler. I refer in this connectio

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to the affidavit of SS Bridgadefuehrer Stroop of February 24, 1946, submitted by the Prosecution as USA Exhibit No. 804 (3841 PS), and to the affidavit of the same date given by the former Aide-de-Camp of the SS and Police-leader of Warsaw, Karl Kaleske. That is USA Exhibit No. 803 (3840 PS). These documents

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show quite clearly that those measures, like all others within the competence of the Security Police and undertaken on direct orders from either Reichsfuehrer SS Himmler, the Higher SS and Police-Leader East, or on instructions from the RSHA, were carried out exclusively by the Security Police and the SD, and that the administration of the Government General had nothing to do with them.

The Soviet Prosecution has also put in evidence as Exhibit USSR - 93 under Article 21 of the Charter the report of the Polish Government. That report makes no distinction between the areas which were incorporated in the German Reich and the territories of the former Polish State which were grouped together in the Government General. But, with particular reference to the fact that the report makes no substantiated statements as to the personal responsibility of the defendant Frank, it does not seem necessary to delve further into this voluminous document. Like the indictment itself, the report constitutes an accusation of a general nature; it does not deal in detail with the results of investigations and with evidence which might justify the conclusions drawn in the report. The objections to be raised to the report must appear all the more valid, as to take only one example in Annex (1) of the report directives for cultural policy are quoted in evidence which are obviously intended to represent instructions given by the Governor-General or his administration. Actually however nothing of the kind is to be found either in the order Gazette of the Government-General or in any other documents. The witness Dr. Buehler stated during his interrogation that the administration of the Government-General had never issued such or similar directives. In consideration of this alone, it would seem at most admissible to attach substantive probative value to this Exhibit USSR 93, in so far as the statements therein made are confirmed by genuine documents and other unobjectionable evidence.

According to the Indictment and in particular according to the statements in the trial brief presented by the Prosecution, the defendant Frank is also alleged to be responsible for the under-nourishment of the Polish population. Actually however the Prosecution is unable to produce any evidence to show that in the area governed by the defendant Frank either hunger-catastrophes occurred or epidemics broke out. The evidence has revealed on the contrary that the

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efforts of the defendant Frank in the years 1939 and 1940 were successful in inducing the Reich to deliver no less man 600,000 tons of grain. That made it possible to overcome the nutrition difficulties caused by the war.

It is true that in the following years the Government-General contributed in no small degree to the war effort by itself delivering grain. But it must not be overlooked that these deliveries were made possible by an extraordinary increase in agricultural production in the Government-General. And this was in its turn made possible by a far-seeing economic policy, especially by the distribution of agricultural machinery, seed-corn and so on. Nor should it be forgotten that the deliveries of grain by the Government-General from the year 1941 onwards, also served to feed the Polish workers placed in Reich territory, and that in general these grain deliveries were utilized to maintain the internal balance as between the European economic systems.

In a number of points of accusation the Prosecution has levelled reproaches against the administrative activities of the defendant Frank in his capacity as Governor-General, without making an attempt to give an even approximately adequate description of the general work of the defendant, and without pointing out its inherent difficulties. There can be no question but that such an attitude transgresses the fundamental rules of any criminal procedure. It is a recognized principle derived from the criminal law principles of all civilized states that a uniform natural process must be judged in its entirety and that it s evaluation must rest on all the circumstances of the case that is in any way suitable for consideration by the Court when passing judgement. This would seem to be all the more necessary in the present case as the defendant Frank is accused of having pursued a long-term policy of oppression, exploitation and Germanization.

My Lords!

If the defendant Frank had in truth had any such intentions, then he could certainly have attained his goal in far simpler fashion. It would not have been necessary to issue hundreds of decrees every year, decrees which, for example, for the year 1942, reached the proportions of this volume that I hold here in my hand. The defendant Frank from his first day of office set himself to intergrate all the economic policy which one can only call constructive. Certainly he did this partly in order to strengthen the productions capacity of the German nation engaged in a struggle of life and death. But

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just as little can there be any doubt that the success of this measures also benefited the Polish and Ukrainian peoples. I do not intend to go into this matter in detail. I will only ask the Tribunal in this connection to take notice of the Report given by the Chief of Government on the occasion of the 4th anniversary of the existence of the Government-General on October 26, 1943. I have included this Report in the Document Books I put in evidence. It is in volume IV, page 42. The Report gives a concise summary of the measures taken and the successes achieved by the administrative acts of the defendant during those four years in all fields of industrial economy, in agriculture, commerce and transport, in finance and credit system, in the sphere of public health, and so on. Only in consideration of all these facts is it possible to form an approximately correct estimate of the whole position. By way of marginal note I will add that the defendant by his administration succeeded in reducing the dange of epidemics - in particular typhus and typhoid - to a degree which had been found impossible in this area in the preceding decades.

If much of what had been achieved by the defendant Frank in the Government-General was destroyed in the subsequent fighting, that can certainly furnish no grounds for reproach against the general administration, which had nothing to do with military measures.

My Lords!

I am certainly not going to deny that in the course of the recent war terrible crimes were committed in the territory known as the Government-General. Concentration camps had been established, in which mass destruction of human beings was carried out. Hostages were shot. Expropriations took place, and so on. The defendant Frank would be the last to deny this;

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he himself waged a five-year struggle against all violent measures. The Prosecution has put in evidence as USA Exhibit No. 610 (437 PS) a memorandum which Frank addressed to the Fuehrer on June 19, 1943. In this memorandum on page 11 he listed 9 points in which he sharply condemned all the evils which had arisen in consequence of the violence practised by the Security Police and the SD and of the excesses committed by various Reich authorities, violence and excesses against which all his efforts had proved unavailing. These 9 points are in the main identical with the points of accusation against Frank. The content of the memorandum of June 19, 1943 however, shows very plainly that the defendant denies responsibility for these abuses. It reveals, on the contrary quite clearly that neither the defendant nor the general administration of the Government-General can be held responsible for the said evils, but that the whole responsibility must be borne by the institutions mentioned above, in particular the Security Police and the SD, and or the Higher SS and Police-Leader East. If the defendant Frank had had the instruments of power wherewith to abolish the evils he condemned, it would not have been necessary for him to address that memorandum to Hitler at all. He would then himself have been able to take all necessary steps. In addition to this the evidence has shown that that memorandum of June 19, 1943 was not the only one addressed to the Fuehrer on the matter. It is clear from the testimony of the witnesses Dr. Lammers and Dr. Buehler, and the defendant's own statements in the witness-box, that from the year 1940 onwards he (the defendant) sent protests and memoranda at regular intervals of a few months both to Hitler personally and to the Chief of the Reich Chancellory. These written protests were invariably on the subject of the violent measures taken and the excesses committed by the Higher SS and Police-Leader and the Security Police including the SD. But none of the protests met with success

As can also be said on the basis of the evidence, the defendant Frank continually made suggestions to Hitler on the subject of improving relations between the administration of the Government-General and the population. The memorandum of June 19, 1943 too is cast in the form of a comprehensive political programme. It includes moreover all the essential points of protest contained

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in a memorandum presente in February 1943 to the Governor-General at his own desire, by the leader of the Ukrainian Chief Committee. This latter memorandum was put in evidence by the Prosecution as USA Exhibit No. 178 (1526-PS). Such suggestions were also consistently rejected by Hitler.

Under these circumstances it is pertinent to ask what else the defendant Frank could have done. Certainly he should have resigned. But that too he did. He offered his resignation no less than 14 times, the first time as early as 1939. His resignation was rejected by Hitler as often as it was tendered. But the defendant Frank did more. He approached Field-Marshal Keitel with the request that he be allowed to rejoin the Armed Forces as lieutenant. That was in the year 1942. Hitler refused his consent to that one too. These facts allow of only one conclusion, namely that Hitler saw in the defendant Frank a man behind whose back he (with the help of Himmler and the organs of the Security Police and the SD) could carry out the measures he considered requisite for attaining the aims of his power policy.

My Lords!

When it became more and more obvious that Hitler and Reichsfuehrer SS Himmler were about to abolish the last remnants of a state resting on law; when it became increasingly apparent that the power of the police knew no bounds and that a police-state of the purest water was in process of development, the defendant Frank came forward and addressed four great speeches to the German public with a last appeal on behalf of the idea of a state resting on law. He did that when Hitler stood at the summit of his power. He addressed this appeal to the German public at a time when the German forces were marching on Stalingra and into the Caucasus, when the German Panzer Armies in Africa stood at El Alame barely 100 km from Alexandria. In the course of the evidence I read some extracts from these great speeches which the defendant Frank made in Berlin, Heidelberg, Vienna and Munich. Those speeches contained a clear repudiation of every form of police-State and championed the idea of the State resting on law, of the independence of the judiciary and of law as such. These speeches found a tremendous echo among lawyers, but unfortunately not in wider circles. Nor in particular were they echoed by the men who alone would have possessed the power to ward off the threatening catastrophe.

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The consequences of this attempt to avert the extinction of the idea of the state resting on law by a last great effort are well-known. The defendant Frank was deprived of all his Party Offices, he was dismissed from his post as President of the Academy for German Law. The leadership of the National Socialist Lawyers Association was conferred on Reich Minister of Justice Thierack. Frank himself was forbidden by Hitler to speak in public. Although the defendant Frank again on this occasion sent in his resignation as Governor-General, Hitler refused to accept it, as he had always done before. The reason for this, as given in a letter from the Reich Minister and Chief of the Reich Chancellery to the defendant Frank, was that considerations of foreign policy had caused the Fuehrer again to refuse this latest request of Frank to be allowed to resign. According to everything that has emerged from the evidence in this trial it may be looked upon as certain that it was not only (and probably not even mainly) for such reasons that Hitler refused to accept Frank's resignation.

The decisive factor was obviously the consideration that it was better polity not to let the security police and Reichfuehrer SS Himmler's other organs fulfil their appointed task openly, but rather to let them continue their work under cover while maintaining a general civil administration under the Governor-General.

Naturally this open breach between the defendant Frank on the one hand, and Hitler and the state police system represented by Reichsfuehrer SS Himmler and the Higher SS and Police-Leader East on the other, could not fail to have repercussions on the position of the defendant in his capicity as Governor-General. Still more than before the various Reich authorities now began to interfere in the administration of the Government-General. Above all however, it was quite clear from the summer of 1942 onwards that the Higher SS and Police-Leader East, together with the organs of the Security Police and SD subordinated to him, took no more notice at all of any instructions issued by the Governor-General and the general administration.

Both in the Government-General and in the Reich itself legal institutions receded more and more into the background. The State was transformed into an unaldulterated police-state, and developments took the inevitable course which the defendant Frank had foreseen and feared. The course which on November 19, 1941 he had outlined at a Congress of the principal sektion chiefs and Reich

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Group leaders of the National Socialist Lawyers Association in the following words:

"Law cannot be degraded to a ›sition wh ere it becomes an object of bargaining. Law cannot be sold. It is either there or it is not there. Law cannot be marketed on the Stock Exchange. If the Law finds no support, then the State too loses its moral prop and sinks into the depths of night nad horror."

The President: We will begin again at 10 minutes past two.

(A recess was taken.)

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AFTERNOON SESSION

(The hearing reconvened at 1400 hours, 11 July 1946.)

THE PRESIDENT: Dr. Pannenbecker.

DR. PANNENBECKER: Mr. President, Gentlemen of the Tribunal: The American prosecution has charged defendant Frick with criminal actions according to Article 6, items a, b, and c of the Charter.

I should like first to examine the question whether Article 6 of the Charter, with the series of penal cases contained therein, is to be considered as the authoritative criterion of the actual penal law which shall state, in a manner irrevocably binding for the Tribunal, those actions that are to be regarded as criminal, or whether Article 6 of the Charter concerns a rule of procedure defining the competence of this Tribunal for specific situations.

THE PRESIDENT: Perhaps it will be for the convenience of the interpreters if I say that we might, as it is now nearly half past two, sit without a break until four o'clock when we rest.

DR. PANNENBECKER: This latter concept has been implied in the prosecution's exposition of the case by Sir Hartley Shawcross' remark that Article 6 fills a gap in international penal procedure but that the actual penal law to be applied to the defendants has already been previously standardized by positive laws. Equally to the point is Part II of the Charter, beginning with Article 6 and entitled: "Competence and general principles", and it may be inferred therefrom that Article 6 purports to establish a ruling as to the competence of this Tribunal to engage a procedure for specific series of crimes.

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Sir Hartley Shawcross' statements were directed against the objection that it is inadmissible and in contradiction with a basic legal principle, to punish someone for an actwhich had not yet been forbidden at the time of its perpetration; an objection which has as a basis the conception that the charter has created a new material penal law with retroactive effect.

It must be tested if the interdiction of retroaction of penal laws is so important a legal principle that it should not be infringed. I need not state to the Court the reasons for which this legal principle found general recognition in all civilized countries, as a presupposition and a basic precept of Justice.

In contradiction to this the Prosecution has in its speech charged the defendants with the fact that they themselves had continuously disregarded law and justice, and inferred from this that the defendants in this trial could not as far as they were concerned appeal to such a legal principle. I do not believe, however, that such an argument can be decisive in these legal proceedings.

The prosecution has denied the still more farreaching question if it would not have been better to repay a person with the same coin and not give the defendants of this trial any possibility at all to defend themselves in an ordered legal procedure. However such an attitude, simply to apply the power of the victor on the defendants, has purposely not been assumed by the signatory powers for reasons presented in detail by the prosecution. On the contrary, Sir Hartly Shawcross has appealed to the Tribunal to use in this procedure -- I quote -- "the undisputable basis of international custom."

However, if one is to proceed in such a manner, then a trial must ensue according to equal principles of law in reference to the question whether the deeds with which the defendant is incriminated are to be regarded as criminal action for which, according to the recognized basis of international custom, punishment is possible. On the basis of international principles of law, there should be no argument if the use of a fundamental law, as in the prohibition of a retroactive law, in its application is to be made dependent on whether or not the defendants concerned themselves with justice and injustice. The decision of the signatory powers, on the basis of considerations which have been seriously weighed to subject the conduct of the defendants to a

judicial examination observing all principles of international custom, signifies not only the adherence to legal procedure equipped with all assurances for fair trial, but this decision by the signatory powers also signifies the observance of the fundamental principles of a materialistic guarantee of justice and to these principles belongs the prohibition of retroactive laws.

In this connection I should also like to point to the fact that the decreeing of the retroactive validity of penal laws, when so ordered by the National Socialist government for certain individual cases, aroused horror in the entire civilized world. Dr. Stahmer has already referred to these cases. At that time, the violation of such a principle of law was generally condemned as a deplorable retrogression in culture.

I also ask the Tribunal to bear in mind that one of the first measures taken by the occupation powers for delivery from National Socialist abuses of law, was to declare void any laws instituting retroactive application of the substantive penal code.

In view of this situation, there exist valid reasons, I believe, which argue that according to its caption, Article 6 of the Charter be regarded an agreement on the jurisdiction of this Tribunal, all the more so as the signatory powers have already and with so much emphasis gone on record for a strict and uniform reobservance of the prohibition against retroactive penal laws.

On the basis of such an interpretation, whereby Article 6 establishes the jurisdiction of this tribunal, it is up to the Tribunal, through its own decision not only to determine whether the charges on which the indictment is based are substantiated, but also to rule on the legal question as to whether, for the facts established in each case by the prosecution, substantive criminal law provides a law which makes punishment possible. To revert in this way to provisions of substantive criminal law in existence at the time the act was committed does not mean it would be impossible for this Tribunal to call the accused to account for offenses which are punishable under all circumstances. There are, however, a number of restrictions resulting from this which, in the opinion of the defense, however, it would be better to accept rather than to violate a principle so essential

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to a just procedure as is the prohibition against retroactivity in criminal laws.

I am therefore of the opinion that it is entirely possible and not inconsistent with the need for a just expiation for actual war crimes to interpret Article 6 according to its caption as an agreement on the jurisdiction of this court to try criminal cases bu not as a new kind of substantive criminal law.

The next few sentences concern themselves with the conspiracy, a matter which has been pleaded ingreat detail by Dr. Stahmer, to such an extent that I can omit these pages and I shall turn now to page 7, beginning with my summary.

The charter does not compel the interpretation that a defendant is responsible also for such acts of commission as exceed the measure of his participation in the common plans. The wording of the charter "in the execution of a common plan "does not contradict the interpretation that the charter establishes responsibility for acts of commission which remained within the scope of the plan discussed.

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The acceptance of responsibility for the actions of others correspond to an equal extent to a judicial precept. but beyond it would violate essential legal principles.

The defense therefore advocates the conception that, as far as the actions of others are concerned and for which a defendant is supposed to be liable, the proof cannot be foregone that these actions, in the manner of their execution, have corresponded to the intention of the defendant.

To give an example:

"The participation of a defendant in rearmament against the regulations of the Versailles Treaty does not in itself justify the assumption that this defendant has also desired a war of aggression, which was later on planned by others, in the further shaping of the plan to mobilize the German people.

I should like now to turn to the various crimes of which the defendant Frick is accused and the first assertion of the Prosecution that the defendant participated in the planning and preparation of wars of aggression. With regard to the problem, as to whether a war of aggression is a criminal offense according to the concepts of law for the period in question, I refer, in order to avoid repetitions, to the statements of Professor Jahreis, with which, in the name of the defendant Frick, I completely agree.

In virtue of thes e convincing statements, there is only one possibility of punishing cooperation in a war of aggression as a criminal offense that can be perpetrated by single persons, if, namely, in opposition to the statements of Sir Hartley Shawcross, the Charter is applied as a rule of substantive penal law, which has for the first time, formulated with retroactive effect that a war of aggression is a criminal offense by individual persons. Considering the other interpretation, which regards Article 6 of the Charter as a procedural regulation on jurisdiction of this Court, the Defense holds that the deduction is cogent that the court is indeed declared competent to judge offenses against peace, but that so far a criminal guilt of the individual defendants is not proven, because one condition for this is lacking, namely, the possibility of establishing that the defendants have offended against a principle of generally valid

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international custom or national law which characterised the war of aggression at the time of their act and declared it punishable as a crime of which a single individual could be guilty. For the statesmen during the period between the two world wars neglected to establish adequate measures of general validity, by which it would have been made clear that anyone who after the first awful slaughter of nations organized second world war would run about with a rope around his neck.

The corresponding statements of the Prosecution that such rules of international law are necessary, are absolutely compelling, but the fact cannot be overlooked that such rules, however, were not created by statesmen at the right time.

A missing rule of law cannot be subsequently cut out for a special case, and replaced by an order of procedure or by the sentence of a court, whose task is to apply the general law, but not to create for a single special case.

I shall now turn to the actual statements of the Prosecution concerning a participation by the defendant Frick in the planning and preparation of wars of aggression.

The Prosecution sees such an activity in Frick's earliest cooperation with the Party which he continued until the year 1933, in order to bring Hitler to power.

The Prosecution appraises in a similar way the subsequent activity of Frick after the taking over of the government by Hitler, when he worked to consolidate the power of the Party and its leaders through measures of domestic policy especially by his participation to the legal measures, by which an armed force (Wehrmacht) was created, against the stipulations of the Treaty of Versailles, and finally his collaboration in measures by which direct preparations were made in case of war.

Proceeding from the interpretation that only a deliberate participation of the defendant in the preparation of a war of aggression is of penal importance, I shall now enter upon the question as to whether the Prosecution has proved that the defendant recognized this by collaboration in the advancement of the Party and its aims as a preparation for war, and wanted it to be so, and therefore deliberately helped to bring about war himself.

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In this connection the Prosecution has stated that Hitler and his Party, from the very beginning, openly pursued the aim of bringing about a change in the foreign political situation of Germany by means of war.

On the basis of this statement the Prosecution has declared that no special proof is necessary that each of the defendants, in working for Hitler and his Party, also knowingly collaborated in the preparation of a war of aggression.

As proof of the fact that Hitler and his Party had from the beginning planned a war of aggression, the Prosecution refers to the Party program, which names as one of its crimes the abolition of the Treaty of Versailles. With not one word, however, is it said in the Party program that this aim should be achieved by force of arms.

From the Party program, however, as well, it has appeared, among others, from the testimony of the defendant von Neurath, there is nothing to prove an intention existing from the very beginning to wage a war of aggression. Nothing different is found in the official publications of the Party from the time of Hitler's assumption of the government.

As the Party did not, on the basis of its official publications, reveal the intention to compel the revision of the Treaty of Versailles by force of arms, it was therefore, even before 1933, permitted outside the territory of the Reich, as in the year 1930 in Danzig with the assent of the High Commissioner of the League of Nations and of the Polish President.

Since the time of his assumption of power on January 30th 1933 Hitler, as responsible head of the Government, took a quite unequivocal attitude in regard to the ways and aims of his foreign policy, whether in official speeches and discourses or in private conversations.

Unchangingly, and upon every occasion he has, since his access to power, stressed his unconditional will for peace and his abhorrence of war, and he always defended this attitude with convincing reasons. He repeated again and again that he intended to obtain certain revisions of the Versailles Treaty by peaceful means only.

I need not repeat the appropriate quotations from Hitler's speeches, which already have been submitted by the Prosecution, to prove to what extent Hitler deceived the world and the people he ruled by his peace speeches,

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which were repeatedly supported by a peal of church bells to increase their effectiveness.

And the world, including theGerman people, has taken seriously these speeches which he, as responsible Government chief, made again and again.

Warning voices which at an early stage became convinced that Hitler wanted war remained, however, a hopeless minority throughout the world.

The Prosecution has repeatedly stressed this world belief which took Hitler's assertions of peaceful intentions seriously, and the best proof of this peace delusion of even the foreign statesmen who also knew the Party's program, lies certainly in the fact that these statesmen neglected to such a great extent to create defensive armaments against Hitler's war of aggression. Nobody in Germany and in the world who was not directly initiated into Hitler's most secret plans seriously believed in it.

From the Party program and from isolated wild speeches, made before 1933 in the period of parliamentary opposition, it is not possible to prove a continuous preparation for a war of aggression since the twenties, supposedly discernible by anybody who looked the Party program through. The Prosecution now contends further that, even if the warlike intentions were not discernible in a general way, the intention of Hitler to prepare a war of aggression must have been clearly visible to defendant Frick by reason of the duties which Frick fulfilled since January 30th 1933 in his capacity as Reich Minister for the Interior.

These duties included measures towards the strengthening of the political power of Hitler and his Party at home. In this connection the Prosecution referred to the collaboration of Frick in the legal decrees by means of which the opposition against Hitler's system of government was destroyed in parliament and in the country; further the legislative measures which eliminated a true self-administration in the cities and rural communities; furthermore, legislative and administrative decrees by which opponents of the National Socialist system were excluded from taking any part in the business of the State and in economic life.

The Prosecution has submitted that, without these measures, Hitler could not have conducted another war, the beginning of which, promising such

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success, presupposed of necessity a complete destruction of opposition in the country and the establishment of the absolute dictatorship of Hitler.

Yet in all the measures I have enumerated, any direct connection with the preparation for war is lacking.

These measures had also their meaning and significance without any connection with a forthcoming war, if considered purely as projects on a National Socialist domestic policy. It has not been proved whether the defendant Frick had furthermore been informed of Hitler's further plans after a strengthening of power at home and for pursuing the aims of their foreign policy of the Party by other than peaceful means, but to enforce them by war.

By establishing retrospective facts that the increase of his domestic authority was Hitler's pre-suppoisition for his later known war intentions, nothing has been achieved unless the proof is forthcoming, that Hitler had, from the beginning, aimed at authoritative power in the domestic sphere as a first step towards the carrying on of war, and that Frick was aware of this when he took part in the activities of the internal policy of which he was in charge.

Furthermore, as they were purely domestic measures, according to the provisions of the Charter, they do not come under the jurisdiction of this Tribunal.

There is no true evidence and it must be admitted that Frick, as a typical Home Office civil servant, considered his measures as absolutely independent drives within the scheme of domestic policy, which, however, had nothing whatsoever to do with the solutions by force of questions of foreign policy.

Neither does another view of the situation derive from the measures dealing directly with Germany's rearmament, i.e. the reintroduction of general conscription and the occupation of the demilitarized zone of the Rhineland.

In his capacity as Reich Minister for the Interior, the defendant Frick, issued the orders of the civil administration for the recruitment of men liable for military service, and he therefore himself signed the Armed Forces Law

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But those measures by themselves could not be considered preparation for war of aggression.

The reintroduction of compulsory military service and the resumption of military sovereignty over the demilitarized Western Zone was explained by Hitler himself to his collaborators and the world by arguments, the reasoning of which was then widely accepted, and after the first shock many foreign statesmen still believed in Hitler's well-founded assurances of peace, and advocated the presumption that there was no reason to fear any belligerent intentions of Hitler. I refer to the document 789-PS U.S.A. Exhibit No. 23 - according to which on 23 November 1939 Hitler personally declared to his Commanders-inChief that he had created the Wehrmacht in order to make war.

But Hitler cleverly obscured this intention by another argument which even at that time still found credence in Germany and abroad and - as proved by the evidence - even his collaborators in his own Cabinet who had not been initiated into his secret plans and believed in it.

It thus happens that several defendants refer to the fact that they agreed in the reconstruction of the German Wehrmacht, though contrary to the provisions of the Versailles Treaty, but that they never wanted another war and did not consider that by collaborating they would contribute to the planning of a war of aggression.

As to the defendant Frick: according to the conception f his defense no proof was given that Hitler had informed him of his belligerent plans, and he therefore cannot be charged with collaborating in the reconstruction of the Wehrmacht as an intentional contribution to the planning of a war of aggression.

A similar situation arises from the defendant's activity in establishing the civil administration in general in the event of a possible war, a task with which the defendant was charged as a General Plenipotentiary for the administration of the Reich by the second Reich Defense Law dated 4 September 1938.

I beg to emphasize that the position of General Plenipotentiary for the Administration of the Reich was created only by the second Reich Defense Law

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of 4 September 1938, and thus had not been included in the first one of 31 May 1935.

Long before, even before 1933, Ministerial Counsellors held conferences dealing with the subject of Reich Defense which since 1933 met at irregular intervals as Commission for the Defense of the Reich, as stated in the documents submitted by the Prosecution. These meetings had nothing to do with an agreement to wage war of aggression. They dealt with general questions of Reich Defense Law of 21 May 1935. The organization for Reich Defense was more closely coordinated, particularly by the appointment of the General Plenipotentiary for the War Economy, and at his interrogation the defendant Schacht explained in detail that the purpose of his assignment was not preparation for a war of aggression according to the tasks and regulations to be found in the first Reich Defense Law but the organization of economy for defense in the event of a war of aggression by other States.

It is not different with the position of the Plenipotentiary General for Reich Administration as it was created by the Reich Defense Law of 4 Sept 1938 which was delegated to the defendant Frick on the basis of his position as Reich Minister of the Interior.

This position meant the coordinated establishment of the entire civil administration for the purposes of Reich defense. According to documents which have been submitted to the Tribunal, it may have been that Hitler wanted the war at the time when he instigated, but it is nevertheless relevant for the defense of the defendant, whether Frick at that time was able to recognize the aggressive intentions of Hitler from the law itself and from its preliminary work or from other evidence or information which was communicated to him at that time.

The law itself does not allow the recognition of Hitler's intention to use it as an instrument of preparation for war of aggression in the scope of civil life.

The kind of tasks which were given to the defendant Frick in his capacity as Plenipotentiary General for Reich Administration had to do merely with the concentration on the domestic administration of Germany in case of a possible war or of a threat of war.

I would like to interpolate that nothing else can be seen from

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Document 3787, USA 782, which was subsequently submitted.

The mode of expression of the law is such that it speaks only about the defense of the Reich in case of a war. It speaks about the "state of defense" and mentions the case of a "surprise threat to the Reich territory", at which occurrence certain measures must be taken.

On the other hand the law does not indicate by any hint that Hitler himself planned to bring about a war and according to the repeatedly discussed principle of Hitler not to divulge anymore of his plans to anyone than the respective person had to know for his own work -- which principle was strictly adhered to even with his closest collaborators -- it should not be assumed, nor has it been proved, that when the order for this law was given to the Ministry of Interior anything else was communicated than the requirement to take precautionary measures - by means of concentration of powers of the domestic administration of the country - against the possible attack on Reich territory by other states.

It is not necessary for me to state in detail that such a measure cannot be considered as premeditated preparation for a war of aggression when it is declared essential to the competent agencies of the domestic administration for the defense of the Reich against the threatened attack by another state, which Hitler understood how to feign very cleverly for all those who did not need to recognize his secret plans and who nevertheless should understand his armament and the organization of the state ordered by him for case of war.

I will deal now very shortly with some further documents which have as their object the activity of the defendant Frick as Plenipotentiary General for Reich Administration.

Frick spoke in his speech on 7 March 1940 about this position -- Document 2608 PS, USA Exhibit No. 714 -- and stated that the planned preparation of the administration for the possible event of a war had been made during the peace by the appointment of a Plenipotentiary General for Reich Administration.

This speech therefore merely confirms that which is already revealed by the text of the law.

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The same applies to Document 2986 -PS USA Exhibit No. 409 -, an affidavit by the defendant to the same effect.

Nor is, therefore, according to this law, the position of the General Plenipotentiary for the Reich Administration as combined with the appointment of a General Plenipotentiary for Economy and the function of the Chief of the OKW, susceptible of reference as a "Triumvirate" holding governmental authority in Germany.

Nothing has ever been known either inside or outside Germany of a government by such a Triumvirate, and witness Lammers too has referred to the strictly subordinate tasks performed by these persons by virtue of orders received, tasks which had nothing to do with the preparation of a war or aggression.

Another field of activity of the defendant is likewise termed by the Prosecution as participation in preparation for a war of aggression; namely, Frick's work for the Association for Maintaining Germanism Abroad.
I am referring to Documents Frick, Exhibit No. 4 and 3258 PS, the latter submitted as - GB 262 -

Both documents reveal that Frick supported the said Association and aided its cultural efforts as a union for the promotion of German cultural relations abroad. It cannot, however, be gathered from the documents that Frick extended any activity whatsoever for the furtherance of the aims of a so-called Fifth Column abroad.

Another document, from which the Prosecution gathered the approval of the policy of the aggressive war by Frick, is the affidavit of Messersmith 2385-PS USA Exhibit No. 68.

This affidavit has been characterized by several defendants as incorrect and the defendant Schacht in particular demonstrated at his examination that in essential points it cannot be correct at all. The witness has not been subjected to cross examination.

I raise a protest for Frick against any use of theAffidavit, all the more so as an additional clarifying questioningof the witness through

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written questionnaires onlyled to the result that the witness, by using general phrases, avoided giving concrete answers to the questions put to him.

The answers in the questionnaires show plainly enough that Messersmith cannot make concrete declaration at all and that he obviously was considerably deceived by his memory in his Affidavit. This may be due to his old age.

I do not believe that his affidavit, which has been refuted in essential points, can be used for passing legal judgment.

As to the point to be established by evidence, that is whether the defendant Frick participated in conscious preparation for war of aggression, the Prosecution submitted a further document - D 44 - USA Exhibit No. 428. From this document it is seen that the Reich Ministry of the Interior is supposed to have given a directive in the year 1935 that official publications were not to be drawn up in a form which might enable people abroad to infer an infraction of the Versailles Treaty from the publication.

This document does not reveal whether actual treaty violations were to be masked with the directives or whether it was only a matter of avoiding the appearance of treaty violations. The same problem exists for Document 1350-PS - USA Exhibit No. 742. This is the minutes of a conference between the Staff of the SA and the Reich Defense Minister, who proposed to the SA in the year 1933 to have the budgetiary funds of the Reich designated by the Reich Ministry of the Interior for the military training of the SA.

The document does not throw any light upon the attitude of the Reich Ministry of the Interior towards this proposal and if they had accepted it, this again would have proved only that the Reich Ministry of the Interior furthered the restoration of the Wehrmacht, a fact which, moreover, is already proved.

Thus, these documents do not furnish proof that the defendant Frick recognized as a preparation for war of aggression the measures ordered by Hitler as necessary for the defense of the Reich.

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During the war, in the year 1941, a few days before the start of the war with the Soviet Union, a conference certainly took place between the defendant Rosenberg and representatives of the ministries concerning measures in case of a possible occupation of territories of the Soviet Union.

This is shown in document 1039 -PS - USA Exhibit No. 146, Rosenberg's report concerning these discussions in which it is stated that negotiations took place with "Reich Minister Frick (State Secretary Stuckart)". These parentheses mean that the Reich Ministry of the Interior was represented in these negotiations by State Secretary Stuckart; therefore that Frick did not personally participate in the nngotiations. Since the negotiations took placeonly a few days before the beginning fo the war in the East, it is not proven by the document that Frick himself was informed about the negotiations before the beginning of the war, which was then, as it is generally known, proclaimed by Hitler, as a necessary measure of defense against an imminent attack by the Soviet Union. It has been clarified by numerous proofs in this trial how much Hitler kept his true aggressive intentions secret, and understood generally how to cover up the true aim of all his political measures throughout the years with thousands of convincing reasons with which he justified the individual measures of his policy of aggression.

There was a very small circle of assistants whom Hitler informed about his war plans, but this circle was not selected according to the position of the person concerned in the Cabinet or according to his position in the Party hierarchy, but exclusively from the viewpoint whether the person concerned had to know the aggressive character of Hitler's general policy or even his detailed plans of aggression in respect to his own tasks in the framework of the preparation of the war.

Document 326-PS USA Exhibit No. 25, shows with what consequence the principle of secrecy had been kept, even toward the older members of the Party and the administrators of important departments of the Reich Cabinet. Whoever, as the Reich Minister of the Interior, had to carry out only measures in the framework of the preparation for war, which could have been the same as tasks of a purely defensive character, was not informed concerning aggressive intention in observance of the latter's principle.

For this reason, the presence of the defendant Frick is not listed in even a single one of these secret conferences in which Hitler informed a circle of selected men about his foreign political plans and his war aims. Hitler had especially accentuated and given reasons for the exclusion of the Reich Cabinet as a governmental body in the document 326-PS just mentioned.

In another record concerning a similar conference -- Document L-79, USA Exhibit No. 27 -- the additional principle is established that no one may be informed about any part of the war plans who does not have to know these plans for his tasks directly. Frick's name is not only missing from the list of those present in the conferences of Hitler concerning his policy of aggression which took place before the war, but the same applies also to the numerous conferences concerning further war aims and Hitler's aggressive intentions which had been held during the war.

The defendant Frick was also not informed or included in the work on them concerning the later attacks, as is shown by Hitler's lectures concerning his plans and the appropriate lists of those present. Frick, a true specialist of domestic administration who was not considered competent for military and foreign political questions, was good enough for the establishment of the civilian administration in case of any possible war. According to Hitler's opinion, the latter's foreign political and military plans were none of the former's business.

However, the prosecution asserts further that the defendant Frick had determined, after the conquest of the foreign territories and after their occupation, the administrative policy in these territories and that he is responsible for it. The Prosecution considers this asserted activity of the defendant, according to Article 6, letter "a" of the statute, as "participation in the execution of wars of aggression".

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According to the presentation of the prosecution, Frick is said to have exercised an over-all control over the occupied territories, especially in his capacity as chief of the Central Agency for the occupied territories.

On the basis of the same function, he is also said to be responsible for all war crimes and crimes against humanity which had been committed in the occupied and incorporated territories before and during the war, until his recall as Reich Minister of the Interior on 22August 1943. It is a question of legal interpretation whether the activity in the administration of occupied territories, pursuant to article 6, letter "a" of the statute, is to be evaluated as the "execution of wars of aggression", or whether a criminal aspect comes into consideration only under the viewpoint of crimes against the rules of war or against humanity. It appears important to me, for the decision of this question, that it does not belon to the tasks of an official of a civil administration to examine, after the conclusion of military operations, whether there is a question of a legal or illegal occupation according to the standards of international law. Such an obligation of examination would mean an overburdenin for the department of the civil administration as well as for the administrative chief, whose activity cannot be designated as illegal for the reason that the territory administered by him had been annexed a short or even a long time ago in violation of the regulations of international law. There is no such obligation of examination in the practice of the civil administration.

The statute also does not force such an interpretation since, under unlimited interpretation, the military operations themselves are to be understood under an execution of wars of aggression, but not the later civil administration of conquered territories.

The punishment of crimes which occurred in the government of the occupied territories would not be made impossible through such an interpretation. In any case, these crimes are subject to punishment as crimes against humanity or against the rules of war according to the statute. In addition, it is to be mentioned for which territories in particular the defendant Frick bears a responsibility.

These are, first, the territories which were incorporated, according to the national law, within the national borders of the German Reich, which are therefore called the incorporated territories.

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With the national legal incorporation into the Reich, these territories came under the administration of the appropriate Reich Ministries for the departments of domestic administration, but only for these and thus under the authority of the Reich Ministry of the Interior. So that the defendant Frick bears, until August 1943, the national legal responsibility of a minister for the domestic administration of these territories.
In the East, this is mostly a question of the territories of West-Prussia-Posen-Danzig; thus, the so-called incorporated Eastern territories which belonged, until the Versailles treaty, to the national entity of the German Reich.

In the East the Memel district received the same constitutional treatment; in the West the Eupen-Malmedy district; and in the Southeast, the Sudetenland. Furthermore, the country of Austria was incorporated into the national union of the German Reich.

For all these territories Frick has a share in the laws and administrative measures which were brought about by the incorporation, and he has the usual responsibility of a Minister of the Interior for the domestic administration of these territories until his dismissal in August 1943.

For the territory of Bohemia and Moravia, however, there was a special government of the protectorate which had been designated as autonomous by the decree concerning the establishment of the protectorate -- Document 2119-PS -- and therefore was not controlled by the Reich Ministry of the Interior.

In a similar way, there was an administration not dependent on the Reich Ministry of the Interior in the Polish territories which have been collected under the designation "General Government" and have been put under the jurisdiction of a "General Governor". Contrary to the so-called "incorporated Eastern territories", the Reich Ministry of the Interior had no right to issue orders or to take care of administrative matters for the General Government -- document 3079-PS, which contains Hitler's decree concerning the administration of the occupied Polish territories.

The same is proved in numerous other documents, among them document USSR 223, the Frank diary where he states that no Reich central offices are authorized to intervene in the government of his territory.

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The same applies to all other occupied territories for which a special administration was established under any legal form.

These seperate administrations were not dependent on the corresponding administrative ministries in the Reich at any given time, but they were under the jurisdiction of the administrative chief of the corresponding territories at any given time, and he himself was directly under Hitler's jurisdiction.

This applies to the occupied Soviet Russian territories, the entire administration of which a was under the jurisdiction of a Reich Minister for the Occupied Eastern Territories. The same applies to Norway, where a Reich Commissioner was appointed.

In a similar way, a Reich Commissioner was appointed for the Nether lan who was also independent, of the Reich Ministry of the Interior, and was directly under Hitler's jurisdiction. In Luxembourg, in Alsace, and in Lorraine, there were also chiefs of the civil administrations who were not dependent on the Reich Ministry of the Interior, while there was a military administration in Belgium and Northern France which was also not dependent on the Reich Ministry of the Interior.

In the same manner the administrative chiefs of the territories which were occupied in the Southeast of Europe were completely independent ofthe Reich Ministry of the Interior. For a part of the occupied territories there is now, in the appropriate decree concerning the creation of a seperate civil administration, the order that the Reich Minister of the Interior is appointed as the central agency, and from this formulation the prosecution has deducted a responsibility of defendant Frick for the administration of all occupied territories,

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as is stated in the indictment.

The actual tasks of the central agency result from the order concerning the establishment of a central agency for Norway -- document 3082-PS, or No.24 in the Frick document book. The witness Dr. Lammers has given a further explanation of the tasks. At that time it was the primary task of the central agency to put personnel at the disposal of the chief of the civil administrations in the occupied territories, if requested. Therefore, if a civil official was needed for any district, the administration of the district concerned turned to the central agency in the Reich Ministry of the Interior, which then put any official from the Reich at the disposal of the chief of the civil administration. The Reich Ministry of the Interior was especially suited for this, since it had at its disposal numerous officials of the domestic administration in Germany.

But the transfer of one official from his own department to another office, which alone gives its orders to the official from this moment on, does not establish responsibility for the further activity of this official in his new department for which the Reich Ministry of the Interior could issue no orders whatsoever. An example : If the Minister of Justice lets the Foreign Minister have one of his official, naturally only the Foreign Minister has the responsibility for the further activity of this official, and not the Minister of Justice who has released the official. This activity of the central agency therefore does not justify the assumption of a responsibility for the administration of the occupied territories by Frick.

The requisitioning of officials for the occupied territories was concentrated in the Reich Ministry of the Interior : that is, as the examination of the witness Lammers has proven -- and I quote from the just-mentioned document 3082-PS --"the unified cooperation of the supreme Reich authorities with each other and with the Reich Commissioner, which is to be brought into unison with the needs of Norway."

Accordingly, the hearing of evidence for the defendants Rosenberg, Frank and Seyss-Inquart, who functioned as chiefs of civil administrations in the occupied territories, has not, on any single occasion, revealed any cooperation of any kind with the defendant Frick either in his capacity of Reich Minister of the Interior or of Director of the Central Office in this Ministry.

Now, the prosecution has referred to several documents in order to prove

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that the defendant Frick exercised extensive control over all occupied territories. Actually, however, those documents, as I have just demonstrated, reveal no more extensive administrative activity. Document 3304 PS evidences administrative activity for the annexed Eastern territories. This coincides with my statement of the case that the annexed Eastern territories, for their internal administration, were subject to the Reich Ministry of the Interior by virtue of their constitutional annexation to the Union of nations of the German Reich. The document, however, bears no reference to the administration of the Eastern occupied territories, i.e., the Government General, or to the occupied Soviet-Russian territories.

The other document submitted, 1039 PS -- U.S.A. Exhibit No. 146 -- evidences the transfer of administrative personnel from the department of the Reich Ministry of the Interior to the Reich Minister for Occupied Territories, a typical task of the Central Headquarters, which I have already discussed. The prosecution has submitted further documents which reveal that the Reich Ministry of the Interior had a hand in the bestowal of German citizenship upon so-called "racial Germans."

This circumstance does not, however, evidence any administrative authority of the defendant Frick for the occupied territories, but merely a typical activity of a Minister of the Interior, whose department is competent for the general regulations concerning German citizenship, including cases where persons living outside the Reich territory are involved. Neither, therefore, can this activity of the Minister of the Interior, affecting specific persons in the occupied territories, evidence an extensive administrative policy and a general responsibility of the defendant Frick for the administration of the occupied territories. In particular, in the occupied territories not annexed to the Reich Territory, Frick had no authority or competence whatsoever in the circle of tasks of the police.

Hitler directly commissioned Himmler to carry out the police work in the occupied territories. Reference can be made in this respect to Document 1997 PS -- USA Exhibit No.319 -- Hitler's decree concerning police safeguards of the Eastern territories, for which Himmler was directly commissioned. The same is revealed by Document 447 PS--USA Exhibit No.135-- a directive of the OKW, dated 13 March 1941, to the effect that the Reichsfuehrer SS in the occupied Eastern territories is charged with certain duties regarding the execution of

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which he acts independently and on his own responsibility.

It is not any different with the police tasks in the other occupied territories, which at times were assigned either to the Reichsfuehrer SS Himmler or to the SS and police chiefs who, I repeat, were exclusively under the discipline of Himmler, but were however, in many cases, actually classified in the range of activity of the civil administration chief involved, the Governor General in Poland for instance. Compare the excerpt from Frank's Diary entered in the Frick Document Book under No. 25 also USRR No.223.

In no case, therefore, were police tasks in the occupied territories under defendant Frick's jurisdiction. Consequently, the defendant Frick bears no responsibility for crimes against the laws of war and against humanity in the occupied territories, since he could neither order crimes nor prevent them.

For the territory of the German Reich, I must now examine the claim of the prosecution as to the responsibility of the defendant Frick for all the measures of the police, including the Gestapo, as well as for the establishment and administration of concentration camps.

May I first refer to the documents submitted by me in evidence which reveal that the Police, including the political police, was, in 1933, still the concern of the individual Laender within the Reich, such as Prussia, Bavaria, etc. Accordingly, in Prussia, the Secret State Police (Gestapo) and the concentration camps were established and administered by Goering in his capacity as Prussian Minister of the Interior. The tasks of the political police were then transferred by a Prussian law dated 30 November 1933 to the office of the Prussian prime minister, which was also managed by Goering. Therefore, when the offices of Reich and Prussian Minister of the Interior were merged, in the Spring of 1934, Frick did not assume political police duties in Prussia since these remained much more incumbent upon Goering in his capacity of Prime Minister.

A similar regulation prevailed in the other Lands where Himmler was gradually appointed Special Deputy for Political Police. During this period, the Reich Minister of the Interior had only the right of so-called "Reich supervision" over the Lands, which Frick made use of by the enactment of general instructions and legal ordinances : and this is the only point where Frick, as Minister of the Reich, could exercise any influence on the affairs of the Political Police and of concentration camps.

Frick made use of this possibility, in accordance with his basic attitude- as confirmed by the witness Gisevius- - to prevent and repress arbitrary actions of the Political Police insofar as this was in his power under the circumstances prevailing then . He endeavored, by the enactment of provisions of law and procedure, to restrict the arbitrary practices of the Political Police of the states.

I am referring to Document 779-PS, submitted by me as Frick Exhibit No.6.

This is a decree dated 12 April 1934, containing such restrictive dispositions under the descriptive preamble -- which I quote -- "In order to counter act abuse occurring in application of protective custody."

This is followed by directives to the state governments forbidding the application of preventive custody in numerous cases in which it had been improperly applied by the Gestapo.

In this struggle of Frick against arbitrary actions of the Laender political police, the latter were, of course, more longwinded because they were under the direction of Goering and Himmler, of whom the "bureaucrat" Frick -- as Hitler disdainfully called him -- could not come within an ace as regards influence with the Party and State.

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For that reason the Political Police of the Laender in its practice frequently disregarded Frick's legal ordinances. As long as there was reason to hope that through his intervention the wild practice of the Political Police of the Laender could be directed into orderly channels and according to legal prescriptions, Frick did not stand by idly.

I refer to document 775-PS, Frick Exhibit No. 9, a memorandum from Frick to Hitler, which clearly and unequivocally calls things by their correct name, mentioning legal insecurity, unrest and embitterment, and severely criticising the Political Police of the Laender because of misuse of the right to order custody in individual cases.

Here I insert: The same document also proves that the defendant in the struggle of the churches stood clearly on the side of the churches. This is also proved by Neurath Exhibit 1.

Now I will continue with my text.

In his testimony the witness Gisevius refers to an additional memorandum which he himself drew up for Frick as a further attempt to restrain and legally control through severe criticism and suggestions the arbitrary practice of the Political Police of the Laender. None of these attempts was of avail because Frick's political influence was too insignificant and because he could not assert himself against Goering and Himmler and -- a thing which at the time could not yet become clear to Frick -- because the practice of Goering and Himmler was essentially in harmony with what Hitler actually wanted himself. Therefore, the documents submitted by the prosecution, taken in conjunction with the evidence offered by the defense, show that in the domain of the Political Police and in ordering custody, Frick had a certain competency at a time when Police service still was a task entrusted to the individual states. However, this evidence also shows that during that time Frick's jurisdiction was very limited and it further shows that Frick, acting within the bounds of his competency, became active only in order to take steps against the terror and arbitrary actions of the Gestapo through general instructions and through repeated complaints in individual cases so that the conclusion is not justified that Frick in any way positively participated in the Gestapo's measures of terror and compulsion. The legal situation changed at a later time.

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With Hitler's decree of 17 June 1936 -- document 2073 PS, document boo Frick No.35 -- police tasks for the entire Reich were combined and uniformly transferred to Himmler whose department was formally made a part of the Ministry of the Interior under the title "Reichsfuehrer SS and Chief of the German Police in the Ministry of the Interior."

The question now is whether this new regulation conferred on Frick in his capacity as Reich Minister of the Interior any authority of command or whether he was given any power to issue instructions on the Political Police, its offices and functionaries, which could be practically enforced. When Himmler in accordance with his own wish and because of his influence on Hitler was appointed Police Chief for the entire Reich there did not exist in Germany a Police or security ministry, properly speaking.

This is the reason why the uniform direction of the Plice through Himmler in person was formally attached to the Reich Ministry of the Interior.

But Himmler wanted to be more than a chief of section in the Ministry of the Interior.

Therefore a position entirely novel in German administrative law was created for him and his purposes. The entire sphere of tasks of the Police was separated from the rest of the activities of the Ministry of the Interior and placed under Himmler's special jurisdiction under a newly created title of office which as a government office included the words "Reichsfuehrer SS", thereby making it possible for Himmler by reason of a title of office characterizing him as Reichsfuehrer SS (in other words a party office at highest level) to carry out State Police tasks in that capacity giving him apparent independence from any instructions issued by a minister of state.

In order to accentuate further the independence of his office within the hierarchy of government agencies Himmler was given the right, from the very beginning, to represent Police matters before the Cabinet on his own responsibilit just like a Reich Minister -- which is also brought out in the decree covering his appointment, 2073-PS. This decree is a prize sample for overlapping of competencies -- something which Hitler favored so very much in his government system. Himmler was part of the Ministry of the Interior and as a functionary of the Ministry of the Interior, was formally bound to abide by instructions of the Minister. However, he also was an independent Police chief with the right

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to represent before the Cabinet on his own responsibility matters pertaining to the Police, thus eliminating Frick. In addition to that, his orders simultaneously carried the authority of a Reichsfuehrer SS and Frick had no authority at allto interfere with them.

The actual effects of this involved arrangement brought out in even stronger measure the towering influence of Himmler on Hitler: Frick repeatedly undertook to intervene in behalf of a safeguard of a well ordered state apparatus, through overall instructions, intended to restrain the arbitrary acts of the Political Police. As late as 25 January 1938 he tried to curtail admissibility of protective custody through a decree and in a series of cases it forbade its improper application.

I refer to document 1723-PS, USA Exhibit No.206, an extract of which under No. 36 is in the Frick document book. It prohibited protective custody in lieu of, or in addition to, legal penalty, forbidding its application by police authorities of the medium or lower level and making mandatory prior hearing of the accused person. He decreed periodical examination of continuance of reasons for confinement and on principle forbade application of protective custody against foreigners in regard to whom he left to the police only the authority to expel them from the Reich in case of acts endangering the state.

It is easy to object that the Gestapo in practice disregarded all these instructions of Frick and that Himmler and his subordinates had maintained an absolute power by terror and violence. This is correct and has been confirmed in detail by the witness Gisevius.

The matter of importance to me in the defense of Frick is something else: to show that Frick himself disapproved such arbitrary acts and that he tried to do all in his power to oppose such arbitrary acts.

Finally, however, Hitler forbade even this. He informed him through Lammers -- as confirmed by him as witness -- that he was not to concern himself with police matters, that Himmler was taking better care of it and that the Police was doing well in Himmler's hands.

This is how Himmler finally came to have the Police completely in his hands and he also gave outward expression to this, by later dropping with Hitler's consent the qualification in his official title "in the Ministry for the Interior", simply referring to it as "Reichsfuehrer SS and Chief of the German

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Police" which also becomes evident from the testimony of Lammers.

I believe that, in view of the circumstances, the problem of defendant Frick's responsibility under criminal law for the political police and their arbitrary measures is not established by the fact that the entire police has been formally incorporated in the Reich Ministry of the Interior since the year 1936, as it has been proven that Frick himself did not participate in arbitrary acts, but tried on the contrary to intervene against such arbitrary practice with his might, which, however, was by no means a match for the personality and the influence of Himmler with Hitler.

In order to obtain a just judgment, I request consideration of the actual situation as to commands and power and not the purely external circumstances of a formal incorporation of the tasks involved in the Reich Ministry of the Interior.

I insert a paragraph here. The prosecution during their presentation on 3 July 1946 brought out Document 181, which has become GB 528. They stated in that connection that this document proved that the political police not only was a part of the Ministry of the Interior, but that Frick had in fact been responsible for the measures of the political police. Actually the document shows only that Frick had been included as Minister of the Interior in the proceedings employed during the sterilization of the so-called hereditary-diseased. The document has nothing to do with any measures of the police, and certainly nothing to do with any measures of the political police. And there is no information in it regarding Himmler's position in the Ministry of the Interior.

Then I continue in my statement.

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In this connection, I must briefly deal with the reference of the prosecution to the fact that Hitler's decree concerning the appointment of Himmler as Chief of the German Police -document 2073 PS- had also been signed by Frick himself.

I believe that the relationship between Frick and Himmler as well as the differing relation of both to Hitler are sufficiently clear to justify the conclusion, that the qppointment of Himmler expressed solely an agreement between Hitler and Himmler, which Frick would have vetoed in vain.

We are confronted with the same problem which applies to so many defendants namely the problem of being one of the formal co-signers of an order which was issued by Hitler and which was also formally signed by the chief of a department, although the department chief had no means of exerting influence on the order and could not have prevented it, either, since the order, would have gave fully into effect as a Fuehrer decree.

I now have to deal more fully with several documents, which have been appraised by the prosecution as bearing on actual activity of defendant Frick within the sphere of tasks of the political police.

I have already dealt with document 3304 PS, to which the prosecution has referred in this connection. It concerns an ordinance about the assignment of a higher Police Chief to the Reichstatthalter (Reich-Governor)in the Eastern territories which are incorporated in the State Union of the German Reich, and hence deals with the administrative structure of the Reichstatthalter's office in a part of the Reich.

The mentioned decree therefore falls within the frame-work of the general competence, of the Minister of the Interior and insofar does not prove a special police activity.

Moreover, this decree has nothing to do with any arbitrary acts of the Gestapo.

Along the same line is the decree of 20 September 1936, document 2245P concerning the appointment of police-consultants with the Prussian provincial administrations, which were also subordinate to the Reich Ministry of the Interior as offices of the general internal Reich administration.

The assignment of a police consultant to the office of the general administration in the province is a measure of the internal Reich administration.

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This measure, too, had no connection with arbitrary acts of the Gestap and particularly it also does not prove the issuance of any instructions by the defendant to the Gestapo.

The same applies to the documents which have been appraised by the prosecution as bearing on participation of the defendant in the establishment an administration of concentration camps or as an approval of terror methods through the Gestapo.

In the preventation of 22November 1945, the prosecution referred to d ment 2533 PS as proof of approval of these arrangements by the defendant Fri

I do not have to go any further into the contents of the document.

It concerns an article of defendant Frank in the magazine of the acade of German Law of which Frick has erroneously been called the author by the prosecution.

Another document does not have enough value as evidence to be utilize for a legal judgment.

I refer to document 2513 PS Exhibit No. 235, which contains an excerpt a speech, which Frick allegedly made in the year 1927 - but the excerpt of t speech is taken from a provincial Social Democrat newspaper, a small paper opposed to Frick, the reporter of which thus had no authentic copy of the speech at his disposal - and we all know what mistakes and misunderstandings are also contained in such short reports, the composition of which cannot be checked b y the speaker himself.

Thus this document, according to which Frick is said to have stated th history is ritten not only with the ballot, but with blood and iron, is not a reliable source.

The prosecution further submitted document 1643 PS -USA Exhibit No. 173

This document refers to the conferences concerning the expropriation of land in order to extend the grounds of the Auschwitz concentration camp.

The general domestic administration is always competent for expropriat and for this reason, an official from the Ministry of the Interior was calle into the negotiations, who st ted however- page 2 of the English traslation of the document- that he was not authorized to dispose of real property. Thus, one cannot construe from this document any political- police activity o the defendant or an approval of the practice of concentration camps.

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Finally, the prosecution in this connection pointed out that defendant Frick personally visited the ORANIENBURG and DACHAU concentration camps.

The defendant does not deny the visit in Oranienburg in the year 1938 about which witness Hoess testified.

At that time, as witness Hoess himself testifies, the external framework of the camps was still that of military training areas. In any case, an official visitor to the camp at that time could not notice any murder, mistreatments or similar crimes, so that the visit is not a decisive argument for knowledge of crimes in the concentration camps.

On the other hand, Frick never visited the Dachau concentration camp, contrary to the testimony of witness Blaha.

In this, I refer to the testimony of Gillhuber, who as the constant companion of Frick would have had to know about such a visit if it had taken place.

I take the liberty of pointing out also that the two other constant companion of Frick have also been mentioned by me as witnesses, but by the consent of the prosecution were considered as unnecessary by the tribunal for the reason that one of the companions would be sufficient as witness.

At the conclusion of this chapter, I must still concern myself with an assertion of the prosecution which designated Frick at one time as the chief of the Reich Security Main Office.

I take the liberty of pointing out the testimony of the witness Ohlendorf who stated to the court that the Reich Security Main Office (RSHA) was a creation of Himmler, who combined in this office his state police tasks and his functions as Reichsfuehrer SS, with which Frick had no relationship of any kind and over which he had even less authority to command. The chief of this office was thus only Himmler himself.

I must go further into the charges which are being made against the defendant Frick in respect to the persecution of members of the Jewish race. Frick shared in the legal measures, particularly the Nuernberg Laws, and in administrative measures, which he regarded as an expression of National Socialist racial policy. On the other hand there is no proof that Frick himself had shared in or had known of the measures of physical extermination which, on Hitler's direct orders, were carried out by Himmler and his organizations, and were being kept secret from those who themselves had no part in these frightful events.

Furthermore, in his capacity as Minister of the Interior, the defendant is also accused of having participated in the killing of the sick and insane. Hitler's basic order is contained in document 630 PS, USA exhibit No/ 342. This document shows that Hitler did not give a corresponding order to some governmental office but -completely outside of the governmental order system of the Ministries- to two single persons, namely Bouhler and Dr. Brandt. Contrary to all rules, Hitler did not sign this order himself in an official capacity as Fuehrer and Reichchancellor, but used personal stationery with the heading "Adolf Hitler".

This shows what the witness Lammers has confirmed, that Hitler did not give an order for these measures to the Ministry of the Interior or some other governmental office, but to two of his party members, as also the Party symbol is the only mark on this stationery. On the other hand the documents submitted by the Prosecution prove that complaints were made which also reached the Ministry of the Interior.

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but they do not prove that, in contradiction to document 630 PS Frick had a share in the measures for the fillings or that he could have stopped them.

After his departure from the Ministry of the Interior, on 20 August 1943, Frick was appointed Reichprotector of Bohemia and Moravia. Here he was given an order wchih, from the start was entirely unequivocal in its competence. I refer to document 3443-PS, also as USSR 60 and No.29 in the Frick document book, further - 1366 PS, submitted by me as Frick exhibit No. 5a. Furthermore, the testimony of the witness Lammers. The office of the Reichprotector was originally the unified representative of the Reichpower in the Protectorate.

In actual practice, however, the authoratative power passed more and more the Frank, the Secretary of State for the Reichprotectorate at that time. With the appointment of Frick in August 1943, through a Fuehrer decree which was not made public, the executive authority was now formally transferred to Frank, whofrom that time on received the official tital "The German Minister of State in Bohemia and Moravia". The Reichprotector, retained substantially the privilege of representation and the right of clemency, the improper use of which by Frick has neither been maintained nor proved by the Prosecution. On the other hand, Frank, as "German Minister of State", according to the above mentioned Fuehrer decree, exercised his executive authority directly under Hitler, by whom he had been directly appointed, and from whom he received his directions without Frick's intervention, Frick being in no way authorized to exercise any influence thereon. Considering this state of affairs, a charge against the defendant Frick cannot be derived from document 3589-PS--USA exhibit No.720.

I now come to the Prosecution's accusation that Frick, by his membership of certain organizations, is responsible for certain criminal actions.

The SS was one of these organizations emphasized by the Prosecution. Frick was never a member of it.

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Similiarly, he was never a General in the SS, as stated by the Prosecution. I might assume this to be merely a mistake on the part of the Prosecution, In any case, the Prosecution did not submit proof thereof.

Frick was likewise never a member of the SA, as shown - probably by mistake - in the chart which indicated Frick's membership of various organizations . There is no proof of this.

The Prosecution has charged Frick with being the supreme chief of the Gestapo, and therefore designated him as its member, on the strength of the argument that since the appointment of Himmler in 1936 as Chief of the German Police, the Gestapo has been formally incorporated into the Reich Ministry of the Interior.

But the Gestapo had its own Chief in the person of Himmler, who alone issued orders, and his formal subordination to the Minister of the Interior, does not necessarily make hi him-the Minister of the Interior - a member of the organization which was exclusively under Himmler's orders. My colleague charged with the defense of the Gestapo will also have to deal with the character of this organization. As to the defendant Frick, I have only to state that he held the formal position of a Reichsleiter in his character of Chairman of the Reichstag fraction of the NSDAP.

The Reichstag having lost its political importance since 1933, which fact needs no further explanation, Frick's position had also practically lost its importance and could not longer be compared with the position of a Reichsleiter who administered important political branches.

And finally, Frick, as Reich Minister was a member of the Reich Cabinet. Also with regard to the character and the authority of this organization I refer primarily to the statements which are yet to follow of my colleague, who has been named defense counsel of this organization.

I am referring here only to the testimony of Lammers and Gisevius, and furthermore to the excerpt from the book of this witness, which I have submitted as Exhibit No.13, as evidence for the position and authority which the Reich Cabinet maintained toward the dictatorial practices of Hitler.

According to all this, the defendant Frick appears as a personality, which certainly exerted a decisive influence on interior policy after his goa had been achieved.

All his measures, however, had inner-political aims; they were not intended to have anything to do with the foreign-political goal of a war of aggression and especially not with crimes against humanity, committed to further crimes against the peace or against the rules of warfare - and only in these cases would this court have jurisdiction according to article 6 of the statute, as has also been stated by the Prosecution.

When Frick realized later that the policy had turned into a direction of which he could no longer approve, he tried to exert all his influence in order to introduce a change.

However, he often had to see more and more that he could not find an audience in Hitler for his representations and complaints. And to the contrary, he had to realize that those complaints destroyed Hitler's confidence in him , as the latter preferred to have himself advised by Himmler and persons of similar attitudes, so that Frick finally was not received by Hitler any more, since the year 1937. If he wanted to present any complaints, Frick then gave up such hopless attempts to introduce a change in the situation, which would not have been changed by his resignation either, which, according to the results of the evidence, he had repeatedly offered in vain.

In this way, his tragedy lies in his entanglement in a system, in the first steps of which he had participated enthusiastically and the development of which he had imagined to be different.

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In any case it appears important to me in judging his personality and his actions, that this presentation of evidence which has gone on for months has not given any proof of the personal participation of the defendant in any crimes, either.

It is not without reason that John Gunther in the book "Inside Europe", which I have presented to the Tribunal as evidence, describes especially the defendant Frick as "the only honest Nazi". Gunther, at the same place, goes on to call him a "bucacrat all the way through". Hitler himself always called him repeatedly the "paragraph scrounger", he whom Frick - just about typically of him - had not met in any public assembly, but in his office with the police in Munich in the year 1923. This man felt enthusiasmfor the suggested power of Hitler, for himself so distant who, with his big word, appealed to his senses, his honor and his patriotism.

It was Hitler who made him proud to be able to participate in the reconstruction of a German nation, which through strong armed forces was to be in a position to play a peaceful but yet active part in world politics.

However, it was also Hitler who understood to throw a scare into the citizen Frick about the supposedly threatening Bolshevist danger and whatever more there existed of false phrases, twisted statements, and propaganda-arts, and which also fooled men of greater mental height who let themselves be driven along by the suggestive power of a Hitler, and who did not realize in time that they had subordinated themselves to the suggestive will of a criminal who was prepared to overthrow the pillars of civilization his aims and who finally would leave Germany behind in a monstrous spiritual and material field of rubble, to the overcoming of which this trial may also contribute through a sentence in accordance with law and justice.

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THE PRESIDENT: Dr. Marx.

DR. MARX: My Lords, I begin with the speech for the defense of Julius Streicher.

When in May of the past year the final action of the greatest and most horrible war of all times came to an end, the German was slow to rise again from the stupor in which it had, for the most part, spent the last months of the war. Like all the peoples of Europe, for years it had suffered unspeakably. The last months in particular, with their bombs, had brought so much misery to both country and people that it almost surpassed all human capacity.

This terror was increased by the knowledge that the war was lost and by the fear of the uncertain fate which the occupation period would bring. And when finally the period of first anxiety had passed, when the German people were slowly beginning to breathe again, paralyzing horror spread once more.

Through the press and radio, through newspapers and motion pictures, knowledge was spread of the atrocities which had taken place in the East, in the Steppes, and in the concentration camps. Germany learned that people, men of its own blood, millions and millions of innocent Jewish people, had been slaughtered and destroyed. Most people felt instinctively that these deeds would necessarily be the greatest accusation amongst all the charges the world had to make against Germany.

The question of whether the German people in its totality had known and approved of these actions was and is the great question for its fate. It is the touchstone by which the decision must be made as to whether Germany will ever be able to return again as a nation with equal rights into the common cultural and spiritual cycle of the world.

As in every case of guilt, there immediately arose in this case as well the question as to who was responsible. And then, a search for that person who had ordered these atrocities, who had carried them out, and how such inconceivable things could have happened at all.

During all this asking and guessing, the news arrived that the former Gauleiter of Franconie and publisher of "Der Steurmer", that is, the present defendant Julius Streicher, had fallen into the hands of the American troops. From the echo this news aroused in the press which was exclusively directed and published by the occupying power and just as well in the radio new, it could be gathered that the world imagined that in the person of Julius Streicher it

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had not only taken prisoner one of the numerous anti-Semitic propaganda agents of the Third Reich, but in short, enemy No. 1 of the Jews.

In the rest of the world it was evidently the prevailing opinion that in Julius Streicher they had seized not only the most active propaganda agent for the persecution and extermination of the Jews, but that he had also participated to the highest degree in carrying out these acts of extermination.

He was said to have been as one heard not only the greatest hater of the Jews and the greatest preacher of extermination of the Jews, but also the person to whose direct influence one must trace back the extermination of European Jewry.

It is only from this viewpoint that it can be explained why the Defendant Streicher sits here in the defendant's dock, together with the other defendants, amongst the chief responsible persons of the National-Socialists system. For, in itself, neither according to his personality nor measured by his offices and positions does he belong to the circle of leaders of the N.S.D.A.P. nor to the Party's decisive personalities.

This opinion which was probably shared in the beginning by the Prosecution, was abandoned by them, however, at an early stage, for the written indictment no longer charged the defendant Streicher with any personal and direct part in the abominable mass murders. Rather, it stated, on the other hand. that there was less evidence to offer for him than for any of the other defendants in favour of a direct and personal guilt. Only his propaganda, his work both written and verbal, was made the subject of an accusation.

As far as particulars are concerned, the counts of the indictment against the defendant Streicher were summed up as follows:

I. Support of seizure of power and consolidation of the power of the N.S.D.A.P. after the latter's entry into the Government.

II. Preparation of aggresive wars by propaganda aimed at the persecution of the Jews.

III. Intellectual and spiritual preparation and education to encourage hatred against the Jews,

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III. Intellectual and spiritual preparation and education to encourage hatred against the Jews,

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a) in the German people,

b) in the German youth, and

c) in the active annihilators of Jewry.

Without Julius Streicher, no Auschwitz, no Mauthausen, no Maidanek, no Lublin. In such a manner, the indictment may be summed up briefly.

As regards Count I of the indictment, the defendant does not deny that as regards the Party's later seizure of power he supported and promoted it with all his might from the very beginning. His support went to the extent of a whole movement which he had built up personally in Franconia, and which he put at the disposal of Adolf Hitler's party, the latter being small, as one can imagine after the first world war, and limited to southern Bavaria only. Furthermore, after Hitler's release from the fortress of Landsberg, he immediately jointed him again and subsequently championed his ideas and goals with the greatest determination.

THE PRESIDENT: I think this is a good time to break off. The Tribunal will adjourn.

(The Tribunal adjourned until 1000 hours, 12 July 1946.)